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THE
REPORTS OF THE COMMITTEES

OF

THE SENATE OF THE UNITED STATES

FOR THE

THIRD SESSION OF THE THIRTY-FOURTH CONGRESS;

ALSO

THOSE OF THE SPECIAL SESSION, 1857.

IN ONE VOLUME:

From No. 291 to 447, inclusive.

THE REPORTS OF THE SPECIAL SESSION ARE AT THE CLOSE OF THE VOLUME.

WASHINGTON:
A. O. P. NICHOLSON, PRINTER.
1857.

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 21, 1856.—Ordered to be printed.

DECEMBER 16, 1856.—Ordered that the report be reprinted.

Mr. EVANS made the following

REPORT.

[To accompany bill S. 109.]

Mr. Evans, from the Committee on Revolutionary Claims, to whom were referred the petitions of divers persons, praying to have the full benefit of sundry resolutions of the Continental Congress for the relief of the officers of the revolutionary army, their widows and orphans, made the following report :

One of the greatest difficulties which the Congress of the revolution and the commander-in-chief had to encounter was, to have a permanent army. For the attainment of this object every inducement was held out to both soldiers and officers, and especially to the officers, to remain in the service. The pay was small ; it was paid in a depreciated currency, and was wholly insufficient to maintain a suffering family at home. Under these circumstances, the commander-in-chief frequently presented to Congress the necessity of making some permanent provision for such of the officers of the army as would remain in the service to the end of the war. In a letter addressed to Congress on the 20th of August, 1780, he says : "On the whole, if something satisfactory be not done, the army (already so much reduced in officers, by daily resignations, as not to have a sufficiency to do the common duties of it) must either cease to exist at the end of the campaign, or it will exhibit an example of more virtue, fortitude, self-denial, and perseverance than has ever yet been paralleled in the history of human enthusiasm. The dissolution of the army is an event which cannot be regarded with indifference. It would bring accumulated distress upon us ; it would throw the people of America into a general consternation ; it would discredit our cause throughout the world ; it would shock our allies. To think of replacing the officers with others is visionary. The loss of the veteran soldiers could not be repaired."

On the 21st of October, only two months after the date of this letter, Congress passed a resolution in the following words : "That the officers, who shall continue in the service to the end of the war, shall be entitled to half-pay for life, to commence from the time of their reduction." This proposition, there is reason to believe, was satisfactory, as the history of the time furnishes no evidence of discon-

tent afterwards. Soon after its passage that succession of events by which the whole of the States were reconquered following in rapid succession; the capture of Yorktown, the evacuation of Charlestown and New York, the preliminaries of peace, and the final recognition of our independence.

From the surrender of Lord Cornwallis the war was virtually ended, but still it was necessary to keep the army together. For a period of near two years the army was kept in a state of inactivity, more unendurable than a state of active warfare. But all this was borne cheerfully, because the officers were promised by their country, and expected to receive, an annuity, small indeed, but enough in those days of economy to support them in comfort.

But, in the meantime, discontent had arisen in the country. The Society of the Cincinnati was formed, consisting of officers alone. This was looked upon as the initiative of a privileged order, consisting of a select number, and all these receiving a pension from the government. This popular discontent, combined with their poverty, induced the application to Congress to change the half-pay for life for a gross sum, to be paid at once, or a compensation limited to a term of years. This would relieve their present necessities and free them from the odium attached to their annuity. The result of this was that Congress, on the 22d of March, 1783, only a short time before the army was disbanded, passed the resolution "that such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years' full pay in money, or securities on interest at six per cent. per annum, as Congress shall find most convenient, instead of the half-pay for life by the resolution of the 21st day of October, 1780; and said securities to be such as shall be given to the other creditors of the United States: *Provided*, It be at the option of the lines of the respective States, and not of officers individually in those lines, to accept or refuse the same." Under these restrictions, (which precluded individual election and the pressure of popular odium and pecuniary want,) it is understood that all, or nearly all, the officers then in service accepted of the terms offered, and, at the conclusion of the war, certificates corresponding to the resolution of Congress were delivered to them respectively.

The history of these certificates, to those who know the history of those times, need not be here repeated. Congress had no power under the articles of the confederation to raise money without the consent of the States. The States neglected or refused to grant the power to levy duties on imports; neither interest or principal of the debt was paid. Depreciation followed, and it is alleged in some of the petitions that not more than twelve and a half per cent. was realized on the amount of them. Thus a captain who was entitled to \$2,400 realized only \$300 from the sale of his certificate of stock, which his necessities coerced him to make. It is true, the government paid the full amount when the public debt was afterwards funded; but the benefit went to the speculators, and not to the officer, who was thus deprived of his reward by the inability of the country he had served to pay the debt which was honestly due to him, which he had so meritoriously earned.

Under these circumstances, the petitioners, who are the descendants of those officers who received the commutation under the resolution of the 22d of March, 1783, have applied to Congress to make good to them now the losses sustained by their ancestors, as hereinbefore stated.

Upon the merits of these claims your committee are of opinion :

1st. That the resolution of the 21st October, 1780, was a contract between the government and the officers. They performed their part by remaining in the service until the end of the war, and were legally entitled to half-pay for life.

2d. That in the agreement to accept in lieu the commutation, they expected (and such no doubt was the understanding on both sides) that the commutation should be in money or something equivalent.

3d. That it may be doubted whether the acceptance of the commutation, without a right of a free and individual election, was an extinguishment of the prior debt. But whether so or not, your committee are of opinion the contract to accept ought not, by a just government, to be interposed, when that which was accepted in satisfaction was not adequate payment.

If General Washington's apprehension that the army would have been disbanded but for some such provision as was made by the resolution of the 1st October, 1780, then this debt was the price of our independence, and should be fully paid. Your committee, therefore, report a bill for the relief of the petitioners.

As a part of this report, they submit an explanation of its provisions.

The first clause provides for the payment of the annuity of half-pay for life, deducting therefrom the commutation received under the resolution of the 22d of March, 1783. This payment is to be without interest, and only to the widow and lineal descendants. The offer of the commutation was accepted as a satisfaction of the life annuity, and the acceptance may have been, in strictness of law, a legal discharge of the debt ; but as the amount actually received, in most cases, fell so far short of the real debt that there should be no hesitancy in remitting the officers and their descendants back to the original promise, regarding the receipt of the commutation as a payment *pro tanto*.

The provision is confined to the officer, his widow, and lineal descendants—collateral relatives are excluded. Gratitude for the services rendered by the officers of the revolutionary army may impose the obligation to provide for their descendants that reward which was due to their ancestors, but the same obligation does not extend to collaterals. If these were legal debts, then they should be paid to the legal representatives, and would be assets to pay debts, and distributable to the next of kin, but the legal obligation was discharged by the election to receive the commutation. The payments to be made under the provisions of this bill are in the nature of a gratuity, founded on a moral rather than a legal obligation, and the reason for allowing interest does not apply.

The fourth section provides for the payment of the seven years' half-pay to the widow and orphan children of all officers who died in the service at any time during the war. Those who died after the resolution of the 15th of May, 1778, was passed, it has never been doubted,

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were entitled to receive, and have been uniformly paid. Those who died before that resolution was passed have been sometimes paid and sometimes refused. In the report of General Knox, when Secretary of War, on this class of claims, no distinction is made between them, and many were paid where the officer died before the 15th of May, 1778. But about twenty years ago, in the case of Mrs. Pinckney, the Judiciary Committee of the House of Representatives made a report adverse to them; since then they have generally, but not always, been rejected.

Your committee are of opinion that there is no reason for making the distinction, and have provided for their payment. As the clause confines the payment strictly within the word of the resolution, only a few cases can arise, as none can be paid under it to a person under seventy-seven years of age. Among the petitioners was one who did not come within the resolution. The father of the petitioner was not in the continental line, but commanded a company called out by a State. Considering this a meritorious case, and as only a few such cases arise after so long a period, the clause has been so framed as to embrace it. The case is like that of General Warren's and some others, provided for by special resolutions of Congress. Such restrictions have been added by which the committee hope to secure to the persons intended to be provided for, the benefit of its provisions, and to secure them against the rapacity of speculators and agents. They think it is time an end should be put to these ancient claims, and have therefore added a clause of limitation.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 16, 1856 —Ordered to be printed.

Mr. BROWN made the following

REPORT.

[To accompany bill S. 477.]

The Committee on Patents and the Patent Office, to whom was referred the petition of Hope S. Newbold, widow of Charles Newbold, praying a grant of land as a remuneration for the services and sacrifices of her late husband in discovering the cast-iron plough, and bringing it into use, have had the same under consideration, and report :

That it appears, from the original parchment now in the possession of the petitioner, that letters patent were issued to Charles Newbold so early as 1798 for a cast-iron plough. The drawings and specifications, filed by petitioner, show it to have been substantially the same implement that has been for a long time, and is now, in general use. It is shown that Newbold was a man of considerable fortune when he undertook the construction of this plough ; that he labored unsuccessfully for a long time, and, when he finally succeeded, his fortune had been wasted. He died in penury and want before the plough had become generally known or used to any considerable extent. On his death, other parties took possession of his invention, and obtained from the government other letters patent, under which, for long years, they had protection, and realized large profits. It was, doubtless, the result of an imperfect organization of the Patent Office at an early day that this wrong was done to Mr. Newbold's heirs. But very clearly it was by the act of the government that the benefits of this important invention have been conferred, almost exclusively, on strangers.

Under all the circumstances of the case, the committee think the petitioner is entitled to relief, and therefore report a bill in conformity to her petition.

IN THE SENATE OF THE UNITED STATES.

Mr. HARLAN made the following

REPORT.

[To accompany bill S. 481.]

DECEMBER 18, 1856.—Ordered to be printed.

The Committee on Agriculture, to whom were referred the several memorials in favor of extending to the land, for the benefit of agriculture, the system of meteorological observation and research which, under the direction of Lieutenant Maury, has been so successfully carried on at sea for the benefit of commerce and navigation; and the memorial of citizens of Maine, praying for the establishment of a Department of Agriculture, have had the same under consideration, and beg leave to report :

The system of meteorological observation and research to which your memorialists refer was inaugurated by Lieutenant Maury about ten years ago, while in charge of the hydrographical department, for the purpose of improving certain maps and charts relating to the winds and currents at sea. These maps had been constructed out of materials collected from the old "log-books" which from time to time had been returned to the Navy Department from the armed cruisers of the government of the United States. They related to a few only of the many commercial paths of the ocean. They were necessarily very imperfect in consequence of the want of proper *data*, but were nevertheless valuable to the merchant marine. Lieutenant Maury obtained leave from the Navy Department to offer them to sea captains in the merchant service, on the conditions contained in the following circular, sent to masters and shipowners :

"Here are certain charts, which embody, to some extent, the experience of the officers of the navy as to winds and currents in certain parts of the ocean. If you will cause to be kept on board your ship a journal, or abstract, as it is called, telling, according to a prescribed form, how you find wind, weather, and sea, and if at the end of your voyage you will return the same to the observatory, then I am authorized to say that you shall be entitled to receive not only a copy of the charts now offered, but a copy also of every other chart for which you shall assist in collecting the material."

As a result of this proposition, more than a thousand American

merchantmen were soon engaged, night and day, in all parts of the ocean, in making observations according to a uniform plan; thus contributing by voluntary co-operation in the execution of the most extensive system of philosophical investigation ever attempted in any age. It was at once appreciated and approved by other commercial nations. They cheerfully volunteered the co-operation of their navies, military and commercial, to aid in its successful prosecution. Thereupon Lieutenant Maury sought and obtained leave to confer with the most distinguished meteorologists at home and abroad, for the purpose of arranging a uniform plan among all nations of meteorological observations at sea. A conference upon this subject was consequently held at Brussels in 1853, in which the principal states of Europe were represented. This conference recommended a plan of observations which has been generally adopted by all sea-faring people. It was approved by Congress. A resolution was adopted directing the Secretary of the Navy to place three government vessels under the direction of the Superintendent of the National Observatory, to aid in perfecting the system of observation so cheerfully undertaken by the commanders of nearly all the merchant ships and ships of war afloat on the ocean, without cost to their respective governments.

In England an office was established under the superintendence of an admiral, to which all the abstract logs kept on board British men-of-war and merchantmen are returned. The Dutch and other nations have established similar offices; and, as the observations for each are made according to a uniform plan, and there being a free and constant interchange of data between these offices and the Observatory at Washington, the materials collected under each flag are equally available to every office. In this manner thousands on thousands of ships—in fact, nearly all afloat on the seas—have become observatories, whose officers record at the same moment every varying phenomena of the atmosphere and of the sea in every latitude from the equator to the nearest approach to the poles. And thus data is furnished for the construction of the “Wind and Current Charts” that are revolutionizing navigation. The results already obtained have astonished the world, and the advantages annually derived by commerce is estimated by millions.

The importance of these achievements, immediate and prospective, as well as the credit due Lieutenant Maury as the originator of this system of observations, has been noticed in the most decided and flattering terms by the Secretary of the Navy in his several annual reports of 1850, 1851, 1852, 1853, 1854, 1855, and 1856; by the Committee on Naval Affairs, in an able report made to the Senate January 29, 1855; and by the President of the United States, in his annual message in 1851; as well as by the most important maritime nations of Europe, a number of whom have solicited permission of Congress to confer on him suitable expressions of their appreciation of his brilliant achievements as a man of science, and of his exalted position among the benefactors of his race.

This is a brief and imperfect notice of the system of meteorological observation and research at sea, which your memorialists pray may be extended to the land.

In the opinion of your committee, it is worthy of consideration whether this may not be necessary, in a commercial point of view, independent of the influence on the interests of agriculture, as an integral part of the system of observations already approved by Congress and the executive department of the government. And it is in this light that your committee propose first to consider the propriety of granting the prayer of your memorialists.

As long ago as 1851, Lieutenant Maury urged the importance of including the land within this system of research. The maritime conference of Brussels, above named, composed of some of the most distinguished men of the age for their ability and scientific attainments, recommended such an extension. Their deliberations, however, were confined by their instructions to the sea; and hence they could do no more than express a hope that at some early day the plan might be so extended as to include the land also, and thus make the system universal. Since then Lieutenant Maury has repeatedly noticed the necessity of such co-operation with him by observers on shore for the completion of his work. And in fact this necessity would be at once inferred, from the slightest consideration of the subject, by the most unpracticed reasoner.

Of the surface of the earth about one-third is estimated to be land. This is divided by large bodies of water into continents and islands; some of them being of vast extent. Meteorological phenomena of a highly interesting character, and having important bearings upon the industrial pursuits of man, have their origin sometimes at sea. They are traced by the observer to the land, and there abandoned, notwithstanding the interest elicited, for the want of a proper system of co-operation. Similar phenomena may be discovered on the opposite side of island or continent; but whether a continuation of the effects of the same causes, or originating elsewhere, it becomes impossible to determine.

The atmosphere covers the land as well as the sea. On land, its electrical condition, its temperature, its humidity, and its movements are, doubtless, subject to more rapid and complicated changes than on the sea. The *effects*, only, of *these* influences can be noticed by the mariner. The originating causes are on shore. Hence, to understand the phenomena of the atmosphere, or to profitably study its laws, it must be studied as a whole. Your committee find this to be the opinion of the most distinguished meteorologists of the maritime nations; and that, in their judgment, the time has come to subject the phenomena of the atmosphere by land and sea to the same system of minute and rigid investigation.

It is believed that the Superintendent of the Observatory can obtain the necessary co-operation to enable him to subject the atmosphere to this system of research, by an appeal to the farmers similar to that made to the mariners, without cost to the government, with the exception of the means necessary to furnish appropriate instruments, and to defray the expense of transmitting this intelligence to the hydrographical office. In order that these observations might be reliable, the instruments with which they are to be made must be correct. An appropriation of a small sum of money would become necessary for

the purchase of a few standard sets, to be distributed among the States and Territories for use and comparison, under suitable regulation to be prescribed by the Secretary of the Navy.

It would be highly desirable, also, to be able to receive from all parts of the country daily reports by telegraph. In this way the condition of the atmosphere in every part of the country, the presence of a storm in any quarter, its direction, its force, and the rapidity of its march, could be known at every point any hour in the day. Simultaneous reports from the various stations of the character of the weather being received and combined at a central office, could not fail to afford results of the highest interest and advantage to every industrial pursuit. Storms, having their origin in one part of the world, and taking up their line of march for another, may be thus narrowly watched by the mariner in communication with the land, in many instances, for days before they would reach his shipping. Being forewarned, he could adopt the necessary means to evade their fury. The same intelligence thus communicated to the farmer and out-door laborer would be equally useful in its results. Every intelligent farmer, who is willing to note his observations, would become a sentinel on the watch-tower and out-post of this broad land, to admonish his fellow-laborers in the fields, as well as his co-laborers on the sea, engaged in carrying his produce to distant markets, of approaching foul weather, and consequent danger; and it is confidently maintained by those whose opinions are entitled to the greatest weight, that with such a system of observation the laws that govern the course of these storms would soon be so well known that, in *most cases*, ship-masters and out-door laborers could be forewarned of their approach. It has been suggested by the same high authority that by mapping the skies, for example, of the United States, and adopting a system of signs and symbols, these telegraphic observations may be so projected on this map as to convey to the observer, at a glance, a knowledge of the appearance of the sky all over the whole country any hour in the day; and that by this means the change of the appearance of the sky, and subsequent changes of weather all over a continent, may be seen and studied from day to day; from which it is believed that science would deduce results of the highest importance.

But however important to commerce and navigation, and all the industrial pursuits, these observations may become, from the considerations above named, agriculture has an interest still deeper and more overwhelming. The growth of a plant is not the result of accident, but of natural causes. The phenomena of the vegetable creation, therefore, is as palpable a subject for the investigation of science as the phenomena of the sea.

Hitherto science has by analysis presented the agriculturist with the elements of his soils, and also of cereal grains, fruits, grasses, esculent and leguminous plants; and has thus enabled him to proceed intelligently, with a knowledge of the constituent elements of plants and soils, to select a soil containing the elementary constituents of the crop he desires to cultivate in sufficient abundance to insure its growth. It has taught him that he must have the necessary ingredients for its formation. That without these it would be vain for

him to plow and sow. As well might the chemist attempt the production of water without hydrogen and oxygen, or the metallurgist brass without copper and tin. Science has thus taught him to adapt to his peculiar kind of soil the crop it is most capable of producing, and thus promises him for his toil its richest possible reward.

Hitherto science has by this analysis taught the agriculturist the character and utility of manures, and the adaptation of each to his field, for the benefit of the crop he wishes to produce; that if any of its necessary elements are absent, they must be supplied before nature can be expected to elaborate and compound them.

These ingredients being usually found in the form of solids, in the deep vegetable loam beneath which some of the States are buried, the harder soil of others, and also in the disintegrating rocks of others, science has taught that they must be reduced to liquids, or become æriform, before the growing plant can appropriate them to its uses. For their solution, nature brings to bear her meteorological forces. That these solids may be readily subjected to their influence, the agriculturist pulverizes them with plow and harrow, and such fertilizers as facilitate their disintegration.

This field has been entered by agricultural societies throughout the country, by agricultural chemists connected with institutions of learning in many of the States, and by the agricultural department of the Patent Office. But there is a field of inquiry surpassing far in interest the study of the constituents of plants, the character of soils, and the nature and power of manures, viz: *the bearing of meteorology on the vegetable creation.*

A very small part of any plant is necessarily derived from the soil in which its roots may be imbedded. The hardest and grossest vegetable matter—as a billet of wood—by the application of heat, loses its hydrogen and other volatile gases; the remaining charred mass readily unites with the oxygen of the atmosphere, leaving a very small residuum of light ashes, which alone seems necessarily to have been derived from the soil. Everything else, by the application of heat and combustion, becoming æriform, has escaped in the atmosphere; hence might have been derived from the air. The atmosphere is a vast repository of fertilizing matter; it is laden with carbon, hydrogen, and nitrogen; and the entire vegetable creation is so constituted as to stand open-mouthed to receive it. So that a very thin soil, with a propitious climate and favorable season, may sustain a very heavy growth; even the largest trees may grow on almost naked rocks; while the richest soil, with an adverse climate, may become comparatively barren.

But the material of vegetation, whether derived from the soil or atmosphere, must be elaborated and appropriated; it must be changed from inorganic to organic matter. And every plant from the germ to the fruit, is but the expression of certain meteorological forces, under whose influence this change is produced. The whole vegetable creation springs forth into active display, or sinks to sleep, according to the degree of heat, the amount of moisture, the intensity of the light, &c., to which it may be exposed. This truth is clearly stated in an

able paper published in the Agricultural Report of the Patent Office. The writer says :

“ All green and living plants exposed to the light, and living upon atmospheric air, obtain most of their *carbon* from its carbonic acid, which they imbibe and decompose ; their *hydrogen* from its moisture, and their nitrogen partly from the amonical vapor which therein exists, * * * and that the rapidity of this decomposition bears a direct relation to the intensity of the light.”

This may account for the wonderful activity of the vegetation of the tropics. The fertility of the soil may not surpass that of the temperate climates, but the meteorological forces are more active and powerful.

With a knowledge of the laws that govern these forces, the gardener will take a plant of any genus, species, or variety, from mountain or valley, from rocks or alluvion, from torrid or temperate zone, and by artificial means create a climate for its reproduction. If, then, the climate of any region, the character of its soil, and its ordinary meteorological forces, could be fully understood, it would not be difficult for science to designate precisely the plant and fruit for which it is best adapted, and thus to determine for the agriculturist, with reasonable certainty, in advance perhaps of years of wasted labor, the capabilities of his fields.

We are encouraged to the adoption of this conclusion from a consideration of what science has hitherto accomplished. A few years since scientific men perceived certain irregularities in the motion of some of the planets. After making a series of laborious calculations, they concluded that these irregularities must be produced by the presence of undiscovered members of the solar system. They proceed to estimate their size and weight with the periods of their revolution. Afterwards they are discovered in the precise position in the heavens indicated. Still more recently our illustrious countryman, Lieutenant Maury, under the direction of the Navy Department, as previously stated, requested the merchants “ who go down to the sea to do business in ships,” to travel as philosophers—to take daily meteorological observations—to note temperature, wind, currents, and weather, according to a uniform plan. Thousands of ship-masters responded ; their ships became floating observatories, and sent up the result of their investigations to the National Observatory. Mr. Maury collated these crude materials, studied the indications of climate, and the apparent habits of the various tenants of the sea. He grouped these into their appropriate departments, mapped the ocean, and projected on this map the field occupied by each class. And now the whale-ship finds the sperm whale in that part of the ocean indicated by science as his usual abode. Mr. Maury again reviewed these crude materials, and remarking that temperature is not controlled by latitude or altitude ; that different degrees of temperature prevail at the same distance from the equator, and at the same elevation, on different meridians, made a series of calculations and combinations, and then predicted that away up near the north pole, once supposed to be the region of perpetual snows and ice, there probably exists an open sea. In the course of two years thereafter, Dr. Kane and his brave companions,

performing incredible labor, and enduring unparalleled sufferings, looked with their own eyes on the billows of that sea, and ate of its fish and fowl, and thus again verified the teachings of science.

Place these crude annotations of meteorological phenomena over the land in the same *master's* hand, and we may reasonably expect him to point the farmer to a suitable field and climate for the production of the desired crop in advance of the foot-prints of the emigrant.

Something has already been accomplished in this direction. The officers of the army, at their various posts and stations, with a commendable devotion to the advancement of science, only equalled by their ardor in defence of their country's flag, have been making diligent observations, from a careful study of which much has been learned of the climatology of our country, and of its capacity to produce the valuable staples, fruits, grains, and grasses. From a study of these, it is now believed, for example, that Kansas will produce grapes equal to France; and that Nebraska, from the Missouri river to the foot of the Rocky mountains, at an elevation of 4,500 feet from the level of the sea, and as far north as 47° or 48° of north latitude, will produce the usual grain crops as luxuriantly as the immediate valley of the Mississippi; that Fort Leavenworth has no advantage, in this respect, over Fort Laramie, at a greatly increased elevation, and far to the northward; that the vast region of country northwest of Iowa, being free from the influence of the northern lakes, and sheltered by the Rocky mountains, has a better climate than States east of it, though considerably southward.

Hence it is seen that, on land as well as at sea, climate is not controlled by latitude alone. And in a country like ours, blessed with every variety of soil, great geographical extent, with the most charming diversity of landscape, including plains, valleys, rivers, lakes, and mountain ranges, it could not be expected that mere distance from the equator would convey any correct idea of climate and agricultural adaptation. The true index of these is to be sought for in careful observation and laborious investigation, conducted according to thermal laws, and by geometrical conditions. Hence the whole earth must be regarded as one vast green-house, containing many co-partments, with an appropriate climate ordained for each. To ascertain their limits, to mark them out upon this broad land, to describe the climate and productions pertaining to them, is the prominent initiatory labor proposed by your memorialists, which, in their opinion, deserves the patronage of the government; that these may be projected on maps of the land, similar to those made by Lieutenant Maury of the sea. They propose that this labor shall not be left to the officers of the army alone, whose posts are often widely separated from each other, frequently changed, or totally abandoned, as the exigencies of the service may require, rendering their observations too scanty and irregular for the attainment of satisfactory results. It has been suggested by Lieutenant Maury, and approved by your memorialists, that the number of observers may be multiplied indefinitely by inviting the co-operation of the farmers and planters of the whole country, like the mariners at sea, to make voluntary observations of

weather, crops, soil, and flora, and report regularly to a common superintendent, by whom they shall be classified and discussed. In this way it is expected that thousands of additional observers may be enlisted in this service, without expense to the government, from whose joint labors, in collecting crude materials for scientific analysis, a very rich harvest of knowledge would soon be obtained.

It is understood that meteorologists and men of science in several of the European States—France, England, Germany, Spain, Portugal, Russia, &c.—have expressed their readiness and desire to co-operate with those of the United States, in such a system of meteorological observations as Lieutenant Maury has hitherto proposed to the farmers of this country, and which your memorialists pray may receive the approval of this government. In this way a uniform system of observations would be rapidly extended to every civilized country. The soil, climate, productions, and meteorological forces peculiar to every part of the world would soon become familiar themes for scientific discussion. And it is more than probable that this would lead to the cultivation of all or nearly all of the more useful plants and fruits of the temperate zones, within the limits of the United States. The tea-plant, the olive, the fig, and the date, and all varieties of grapes are indigenous to just such climates as doubtless exist in our country, and which may be discovered by proper investigation. When the tea-fields of China, for example, shall have been carefully studied and understood in relation to soil, strength of light, amount of moisture, degree of heat, character of electrical forces, proximity to water, desert or mountain ranges, and exposure to atmospheric currents, then the same tea may be produced by the American planter, simply by the discovery and proper culture of similar fields. The same would be true of the coffee-tree, and of every other useful plant. In this way, doubtless, may be transferred to America, and probably to the United States, all the most valuable cereal grains, grasses, fruits, leguminous and esculent plants in the world.

The advantages to be derived from the cultivation of new crops cannot be accurately estimated. That they would be very great, none, who have given attention to this subject, entertain a doubt. The potato and Indian corn have recently been brought into use. But a few years since they were unknown in many parts of the world where they now supply millions with daily food. Other plants of equal value could hardly fail to be discovered and brought into general use. And those now known would be improved in character and their culture extended to other countries. It is now known, contrary to previous conjecture, that sugar-cane will flourish and mature in any climate that will produce and mature Indian corn, if protected from the severe frosts of northern winters. The same soil, the same amount of moisture, the same degree of light and heat necessary to produce and mature a luxuriant crop of Indian corn, will produce and mature an equally abundant crop of sugar-cane. Hence the discovery of an annual sugar-cane plant, or the transmutation by hybridation of some one of the known species to an *annual*, is all that is now necessary to enable the people of Illinois or Missouri to produce sugar as success-

fully as the people of Louisiana. Whether the Chinese sugar-cane will prove to be the necessary species, time alone can determine.

The regular report of the condition and prospects of the growing crops, from every part of our country, to a central office, as contemplated by your memorialists, furnishing the data of official bulletins, would be of sufficient importance to both producer and dealers to require the approval of the government. But when all commercial countries are to be embraced in the same system of observation and research, its importance becomes overwhelming. In consequence of the introduction of steam, the improvement of navigation, the construction of railroads, the spread of commerce, the use of the telegraph, and the rapidly increasing facilities of intercourse, the farmer and planter of the United States is almost as much interested practically, in knowing the state, prospect, and amount of crops in foreign lands, as in his own country. The wheat grower of Illinois is not only concerned to know whether the wheat crop of other States is above or below the average, but also whether a short or very abundant crop has been harvested in Europe. The crops in other parts of the world tend to increase or diminish the price of his own grain; for in the markets abroad he is compelled to compete with the grain-grower upon the waters of the Black sea, in the Canadas and elsewhere. In Liverpool the corn of the Danube competes with that of Kentucky and Indiana. The sugar planter in Louisiana is directly interested in the abundance of that crop in Cuba and Brazil. A short crop of cotton in India and Egypt enhances by millions the value of that crop in the valley of the Mississippi; and so with all the other great staples of agriculture. To enable the farmers and planters to know in advance the prospects of the growing crops with which their own must compete in the markets of the world, is to enable them to reap the just reward of their own industry; to refuse it is to place them at the mercy of the dealer.

Such are some of the more obvious results which agriculture is certain to reap from the adoption of this system of research proposed by your memorialists. And as important and valuable as are the benefits thus promised, we are entitled to count upon others still more valuable, but which no sagacity can anticipate. They are such as every well-planned and properly conducted system of philosophical research has developed. An apt illustration of the value of these unforeseen results is afforded by the very system of research that the memorialists pray may be extended to the land. That system had for its object to investigate the direction of the winds and the set of the currents at sea for the benefit of navigation. As important as are the bearings of the results actually obtained in this regard, they dwindle into a small compass when compared with results and discoveries that have been brought out, and that were neither enumerated among the original objects of research, nor contemplated by any one. Among these may be mentioned the demonstration of the practicability of establishing a sub-marine telegraph across the Atlantic. No such problem was embraced by Lieutenant Maury in his original plan of research; yet the discoveries made during the course of his investigations upon winds and currents demonstrated its practicability. Thereupon a company has been formed, the capital raised, and contracts

made for spanning the Atlantic with a telegraphic cable, the success of which will now scarcely admit of a doubt. This, when completed, will doubtless have a marked influence on the interests of the producing classes of this country. An advance in prices in Great Britain and western Europe may now be heralded by telegraph to the grain-growing countries of the continent, shipments may be made, and the demand supplied before the advance in price can be known in this country. By telegraph across the Atlantic such news will arrive at Boston and New York as soon as it could reach the regions of the Danube and of the Black sea. This would enable the producers of this country to compete successfully with those of the Old World.

Again, when "Franklin demonstrated the identity of lightning and the electric fluid," he had "little else in view but the means of protection from the thunder-clouds." This discovery, however, gave a great impulse to electrical research, which has resulted in the entire revolution of the science of chemistry, and in advancing the useful arts, aiding navigation and astronomical research, and which has made the electric spark "the messenger of intelligence across the land and beneath the sea."

So doubtless it will be when the proposed system of research shall be extended to the land.

When it is considered that this proposed research by land is a necessary part of the system now so successfully prosecuted at sea—that the interests of navigation and commerce demand it—that the direct and certain advantages to agriculture would be incalculable—that the field is broad, and reasonably promises other important results that no foresight could particularly define—that the same officer who has secured the applause of the world for his achievements in the part of the field already traversed is anxious to enter this, and stake his reputation on reaping another rich harvest of honor for his country—that it is necessary to place our farmers and planters on an equal footing with those of Europe and Asia in the markets of the world—that the necessary observations are to be made, and the crude materials collected gratuitously, so that the draft on the treasury will be very small, covering merely the office expense in the discussion of the data collected, the cost of the instruments used, and the transmission of despatches—that the agricultural and planting interests of this country surpass all other interests—that heretofore the federal legislature has addressed itself to the advancement of these great interests so rarely and with such a sparing hand; when we compare the means with the end—the magnitude of the results confidently expected with the small amount of money required; and when we recollect how much of the legislation of the country and of the public money is applied to other interests so small in comparison, and that other nations, through the influence of their scientific men, are volunteering their co-operation so as to extend this system to the whole earth, your committee are unable to discover any sufficient reason for withholding the sanction of the government of the United States. They therefore recommend that the prayer of your memorialists may be granted, and ask leave to introduce a bill.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 18, 1856.—Submitted and ordered to be printed.

Mr. WELLER made the following

REPORT.

The Committee on Military Affairs, to whom was referred the memorial of Mrs. Eliza E. Ogden, widow of Captain E. A. Ogden, having had the same under consideration, report:

That the memorialist in this case prays to be allowed a commission upon certain disbursements made by her late husband while he was an assistant quartermaster United States army, viz: from 1838 to 1845, upon the principle recognized in the recent acts of Congress for the relief of Mrs. Heitzel and Mrs. Mackay.

Mrs. Ogden claims commissions as follows:

For disbursements on account of Indian hostilities in 1840 to 1843, 2½ per cent. upon.....	\$116,040 00
For disbursements on account of Mexican hostilities in 1846 to 1849, upon.....	403,018 31

The allowances of two and a half per cent. heretofore made to Captain Heitzel and Colonel Mackay, were so made because, at the time they performed these services—during hostilities with the Creek and Seminole Indians—the quartermaster's department had not sufficient officers for the responsible, laborious, and important duties which devolved upon them by the sudden state of war, and all the powers and faculties of the few officers composing it were taxed to the utmost. In July, 1838, Congress authorized the appointment of twelve additional officers in that corps, and Major Ogden was one of those so appointed, and not being a quartermaster at the time, for which Captain Heitzel and Colonel Mackay were compensated, he cannot be classed with them. Colonel Mackay, however, was also allowed a commission of half per cent. upon \$223,194 75, special appropriations on account of Mexican hostilities in 1846-'47, upon the principle of the act of 12th August, 1848, granting a commission to paymasters for disbursement to volunteers.

It is not believed that Congress intended this gratuity to the widow of Colonel Mackay as a precedent for its future government, particularly as the act of 3d March, 1839, provides that "no officer, in any branch of the public service, shall receive any extra allowance or com-

pensation for the disbursement of public money, unless the same be authorized by law."

The committee are of the opinion, that allowing a commission as prayed for in this case would invite all the disbursing and accounting officers of the Mexican war, both civil and military, to institute similar claims. The pay of army officers is presumed to be a recompense for all their time, and they may be said so to contract with the government when they are commissioned; and if, during war, they are charged with duties more onerous than during peace, it should by no means be considered a just reason for extra compensation.

The committee, therefore, recommend that the prayer of the memorialist be not granted.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 23, 1856.—Submitted and ordered to be printed.

Mr. WELLER made the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Captain John S. Van Dyke, having had the same under consideration, report :

That the petitioner prays to be allowed back pay, pension, and bounty land, as an officer in the military service of the United States during the late war with Great Britain; but as he presents no proof whatever of his said services, and as there is no record evidence that he was in the service as alleged, the committee report as follows:

Resolved, That the prayer of the petitioner be not granted.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 23, 1856.—Ordered to be printed.

Mr. FESSENDEN submitted the following

REPORT.

[To accompany bill S. 483.]

The Committee of Claims, to whom was referred the memorial of Elias Hall, report:

That, from a careful examination of the papers in this case, they are satisfied with the truth of the following statement of facts, viz :

The memorialist was a gunsmith, and in 1812 was doing a large and profitable business in Middlebury, Vermont. In October of that year, a portion of the American army being stationed at Plattsburg, New York, Lieutenant Colonel Brearly was sent into Vermont to procure a quantity of pikes for the use of his regiment. After several unsuccessful efforts, he applied to Mr. Hall, who entered with great energy and patriotism into the service of supplying the army with the desired weapons. So highly pleased was Colonel Brearly with the skill and energy of character manifested by the memorialist that he prevailed upon him to repair to headquarters, "that the army might avail itself of the services of an armorer and artificer so completely qualified, in all respects, to execute every branch." And Colonel Brearly says he was satisfied, from personal knowledge and observation, that Mr. Hall's motives for entering the service were evidently more from a spirit of patriotism than any prospect of emolument.

On their arrival at headquarters he was introduced to General Dearborn "as just the man the public service required" to superintend the repair of small arms. At a subsequent interview, General Dearborn proposed to him to engage in the service in that capacity, which he agreed to do, at a compensation of \$50 per month and rations, for "during the war." He was paid for his services at the rate stated, from that time until the 22d July, 1814. From this time until the close of the service, in consequence of some informalities, he failed to receive his pay. General Dearborn had left that place, and seems to have failed to officially report the arrangement with Mr. Hall, although General Bomford certifies that General Dearborn informed him of the fact, and promised to furnish the department with a certificate to that effect, which he seems to have failed to do.

The claim has been several times presented to the department, and although it seems to have always been regarded as just, they have not deemed themselves authorized by law to pay it.

General Talcott, in a letter dated June, 1853, after stating that no record of the contract can be found, says: "But desirous that meritorious services should not be overlooked nor neglected, I would recommend that you make out regular accounts, &c., and to make affidavit to its correctness." The account was accordingly stated and submitted to the Ordnance Department, and General Talcott, the head of that department, says in regard to it: "I consider [it] an equitable claim upon the government, but so much time has elapsed since it originated, and almost every one who could supply the information necessary to corroborate or sustain the claim having deceased, it has not been possible for him to present it in such a shape as to obtain payment."

The amount due for pay and subsistence is \$421 52. And if interest were allowed by way of damages for its detention, the amount would be \$1,507 20.

Mr. Hall also presents a claim for sundry expenses incurred by him in the public service, which he specifies and verifies by oath, amounting to \$40 50, and for a horse lost in consequence of urgent and extraordinary service performed immediately preceding the battle of Plattsburg, and in the preparation for that action, \$95, making \$135 50. The loss and value of the horse are sustained by other evidence.

The high character of the memorialist for truth and integrity, and for patriotic zeal and devotion to his country, is well attested by several of the most eminent citizens of his State, as well as by the officers of the army with whom he served.

The committee therefore concur with the head of the Ordnance Department, after a full examination of the facts, that this venerable patriot has a just and equitable claim upon the government; and as he has already completed his seventy-sixth year, if his last days are to be cheered by a manifestation of the justice and magnanimity of his country, immediate action is indispensable.

The statement of Mr. Hall contains so clear and graphic an account of his services, and of the operations of the troops and local militia in the defence of Plattsburg, that the committee append it hereto, and make it a part of this report.

In conclusion, the committee report a bill for the relief of Elias Hall, of Rutland, Vermont, and recommend its passage.

The whole amount of the original claim is \$557, for which the bill provides payment, without interest.

MEMORIAL

I, Elias Hall, of Rutland, Vermont, aged seventy-five years, depose, testify, and say: That by a verbal agreement made with Major General Dearborn, near Canada line, on the 17th day of November, A. D. 1812, I was to have fifty dollars per month and subsistence, which

IN THE SENATE OF THE UNITED STATES.

JANUARY 2, 1857.—Submitted and ordered to be printed.

Mr. JONES, of Iowa, made the following

:REPORT.

[To accompany bill S. 486.]

The Committee on Pensions, to whom was referred, on the 19th ultimo, the petition of John Mitchell, praying for an increase of pension, ask leave to report thereon as follows:

The petitioner, while engaged in the service of the United States on board a transport vessel, during the war with Mexico, was ordered by his commanding officer, on receiving the news of one of our victories, to assist in firing a salute; and in the discharge of this duty, owing to the carelessness or inefficiency of one of the gunners, fire was left in the cannon, and on ramming home the charge it exploded, by which accident both petitioner's arms were destroyed.

An act approved May 29, 1848, placed the petitioner on the invalid pension roll at ten dollars per month, to commence on the day when he received the injury. And on the 15th May, 1850, his pension was increased to twenty dollars per month from that date; an amount quite inadequate, in the opinion of your committee, for the maintenance of a man in such a helpless condition, and who, in the language of the petitioner, "is unable to take one mouthful of food without assistance."

The committee, therefore, agree in reporting a bill for his relief.

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1857.—Ordered to be printed.



Mr. FESSENDEN made the following

REPORT.

[To accompany bill H. R. C. C. 13.]

The Committee of Claims to whom was referred bill H. R. C. C. No. 13, entitled "An act for the relief of Mary Reeside," report:

From 1816 to 1836, a period of twenty years, *James Reeside*, of Pennsylvania, was very extensively employed in the transportation of the United States mails under contracts entered into with the Postmaster General. It will be recollected that during this period the Postmaster General possessed almost unlimited authority and control over the management and the revenues of that department. He made the contracts for mail service in his own name, and collected and disbursed the funds of the department at his discretion. The policy of the postal laws at that time was that the post office operations should constitute a self-sustaining system. The head of the department was authorized to expend its entire revenue; but he was not expected to call upon the general treasury for aid or support.

The rapid expansion of our population, and the great and exciting political controversies which agitated the country during the latter years of Mr. Reeside's service, created an almost resistless demand for largely increased mail service. The department yielded to these demands to such an extent, particularly between the years 1828 and 1832, that its finances became embarrassed, and in order to relieve itself it resorted to the expedient of employing the agency of some of its leading contractors to endorse and negotiate its acceptances. In this way its revenues were anticipated, its finances become more and more embarrassed each succeeding quarter—its credit became impaired, and its ability to continue in the performance of its functions was reduced to dependence upon the private credit of its principle contractors. In 1834'–5, the increasing embarrassments and difficulties of the Post Office Department attracted the serious consideration of Congress and the country. It was evidently upon the verge of bankruptcy, from which the interposition of the government alone could rescue it.

The President of the United States, in his annual message to Congress in December, 1835, states the indebtedness of the Post Office Department on the 1st July preceding at \$1,064,381. A new Postmaster General (Mr. Kendall) had recently taken charge of the department, and, in his report to the President of December 1, 1835, after stating the difficulties under which the department was laboring, he says: "No satisfactory account of its debts, or its means, could (within any short period) be obtained from its books. It was only perceived, from current incidents and detached accounts, that the unsatisfied demands from contractors, from every quarter of the country, were daily accumulating; that there was a debt of near \$300,000 due the banks; that the outstanding acceptances of the treasurer exceeded \$390,000; that a considerable portion of the revenue of some of the large offices for the present calendar year had been anticipated by drafts," &c. "In this state of things, it was deemed expedient to make an effort to extricate the department from its embarrassments." The measures resorted to for that purpose were as follows, viz:

1. A suspension of all recent allowances from the credit of the contractors.
2. A refusal to accept or pay any drafts drawn on the department, except by special arrangement.
3. The application of the income of the current quarter to the payment of that quarter's expenses, the surplus only to be applied to pre-existing claims.

However necessary to the department the adoption of such extraordinary measures may have been, it is very apparent that their enforcement must have operated very disastrously upon the large contractors. They were relying, as they had a right to do, upon these allowances, made by the Postmaster General in the exercise of his official authority and discretion, for the means of meeting the current expenses of the service, and upon the acceptance and payment of the usual drafts to meet the outstanding liabilities for which they had become responsible. The result was that while the finances of the department were rescued from embarrassment and ruin its contractors and fiscal agents were reduced to bankruptcy.

Among the principal sufferers were James Reeside, the original claimant in this case, whose long continued, extensive, and energetic services had acquired for him the sobriquet of "Land Admiral Reeside," and Stockton & Stokes.

The accounts of the last named gentlemen and their associates were subsequently adjusted under a special act, passed July 2, 1836, and which provided that the Solicitor of the Treasury should settle and adjust the claims of the parties named, for extra services performed by them as contractors for carrying the mails, and should inquire into and determine the equity of their claims on account of contracts, on which their pay may have been suspended by "the present Postmaster General."—(6 Stat. 665.)

Under this act, the Solicitor of the Treasury awarded to the claimants the sum of \$161,563. On this adjudication the Postmaster General entered a credit to the parties for \$120,938, but declined to enter the balance, on the ground that the arbitrator had exceeded the

jurisdiction conferred upon him by the act, and taken cognizance of matters not embraced within its provisions. The question was subsequently brought before the Supreme Court, and the entire award affirmed and paid.

On the same day of the passage of this special act, providing for the equitable settlement of the claims of Stokes and others, Congress also passed a general law, entitled "An act to change the organization of the Post Office Department, and to provide more effectually for the settlement of the accounts thereof."—(5 Stat. 80.) And in order to enable the Postmaster General effectually to adjust and close up the pre-existing accounts and transactions of the department, he was authorized by the 17th and 18th sections of this law to institute proceedings, both in law and equity, for the purpose of judicially testing the extent of his authority to revise the previous acts of the department and its officials, and to re-open and re-adjust the accounts of its contractors and others, and to finally determine the rights of the parties. The 17th section of this act is as follows:

"Sec. 17. *And be it further enacted*, That in all cases where any sum or sums of money have been paid out of the Post Office Department to any individual or individuals, under pretence that service has been performed therefor, when, in fact, such service has not been performed, or by way of additional allowances for increased pay, actually rendered when the additional allowance exceeds the sum which, by the provisions of law, might rightfully have been allowed therefor; and in all other cases when the moneys of the department have been paid over to any person, in consequence of fraudulent representations or by mistake, collusion, or misconduct of any officer or clerk of the department, it shall be the duty of the Postmaster General to cause suit to be brought in the name of the United States, to recover back the same or the excess, as the case may be, with the interest thereon."

The evident object of this provision was to secure a judicial investigation of the disputed pre-existing accounts and transactions of the department. Large sums were claimed to be due to them by the contractors and financial agents of the department on the one hand, while the department, on the other hand, claimed that these parties were largely its debtors. In the case of Stokes, *et als.*, the Solicitor of the Treasury was constituted a special tribunal, and his award of a large sum to the claimants was held to be valid against the government.

In the analogous case of James Reeside, the case under consideration, the Postmaster General, in accordance with the above provision of the act of 1836, caused suit to be brought in the United States circuit court for the eastern district of Pennsylvania.

The department claimed a balance of \$32,709 62, while Reeside claimed a balance due him of about \$275,000. The suit was commenced in 1839, and the trial was had in October, 1841. It occupied five weeks, and the jury were engaged two weeks in the investigation of the case, which resulted in their finding a verdict against the government, and on the issue on the plea of set-off, and on pleas putting the whole matter in issue, they certified that the government owed the defendant the sum of \$188,496 06. Applications for the payment

of this sum continued to be urged upon Congress up to the time of the organization of the Court of Claims, when the case was brought before that tribunal. In the proceedings in the Court of Claims, though evidence was introduced to sustain the entire justice of the case, which is now all before the committee, the case was made to rest upon the legal effect of the verdict and certificate rendered in the circuit court—the claimant taking the ground that the verdict of the jury at that trial should conclude all further controversy as to the facts which were litigated, and should be deemed record and indisputable evidence that the United States owed the sum therein stated—and the evidence mainly relied on consisted of a transcript of the record on that trial.

But from all the voluminous evidence before the committee, (and it was also before the court,) it is apparent that the trial before the circuit court was a fair and full litigation of the state of the accounts between Mr. Reeside and the Post Office Department. The counsel on the part of the government were Mr. Read, district attorney, and Mr. Cadwallader, both eminent lawyers of the Philadelphia bar; Judge Baldwin, of the Supreme Court, and Judge Hopkinson were upon the bench.

On the motion for a new trial Judge Baldwin said: "We had no doubt at the trial—both judges concurred in opinion—that nothing was due to the United States, and that something was due to the defendant." Again: "With all the time and labor which could be devoted to the cause, as well out as in court, the judges could come to no conclusion other than that a balance was justly due to the defendant." And again: "I am satisfied that the result approximates as near to a correct balance of accounts as could reasonably be expected upon another trial. Both parties appeared to have produced all the testimony which was accessible to them. It cannot be expected that a better or more impartial jury can be selected: there certainly cannot be one more patient and attentive than they have been."

It appears from these extracts from the decision of Judge Baldwin, denying the application for a new trial, that the court as well as the jury was satisfied that the United States were justly and legally indebted to Mr. Reeside to a large amount, and that the best practicable means for ascertaining the true amount of that indebtedness had been fully exhausted. Aside, then, from the legal validity and technical effect of the result of that trial, can it be expected that after the lapse of twenty years from the date of the transactions, and the death of most of the parties engaged in them, a more reliable adjustment of the accounts is attainable? And if not, can the government relieve itself from a just responsibility otherwise than by the payment of the sum awarded?

But the case now comes before the committee by a House bill, as reported from the Court of Claims, upon its legal merits—upon which ground it is sustained by that tribunal, one of the judges dissenting. Its original merits were not regarded as being in issue before that court, although its justice and equity were elaborately insisted upon. These seem to have been conceded, upon the evidence exhibited, and which is found amongst the papers. The allegation was, that the

United States owed the representatives of James Reeside "a judgment or debt of record," amounting to \$188,496.06, with interest, and the evidence adduced in its support was a copy of the record of the circuit court of the United States, duly authenticated. The legal questions were elaborately argued, on the part of the petitioner, by counsel of eminent learning and ability; and the several arguments, in a printed form, are before the committee. The argument of the United States Solicitor does not appear; but a brief submitted by him in the case of Thos. Fillebrown, and substituted in this case, is presumed to show the grounds assumed on the part of the United States. In that brief it is contended, on the part of the United States: 1st. That the Court of Claims is not concluded by the finding of a jury or the decisions of any court.

2. That it is not sufficient to authorize this court (Court of Claims) to give a favorable judgment to the claimant; that he shall produce and show to the court the judgment of the Supreme Court on the same legal questions, and the verdict of the jury on the same matters of fact; but that the proceedings in that court must go upon the original merits of the cases, irrespective of the action of other courts. And it is upon the issues thus submitted that the opinion of the court is pronounced.

The questions, as stated by the court, are as follows:

1st. "Is the record of the verdict and judgment thereon competent evidence for the petitioner?"

2d. "If admissible, what is its effect?"

3d. "Is the petitioner entitled to interest?"

In deciding these points, the court holds, in effect, that suit having been brought by the United States under the act of 1836, and the defendant being authorized by act of Congress to set up his claim against the United States in that action, the laws of Pennsylvania, where the trial was had, were made applicable by the 34th section of the judiciary act of 1789, to the United States as a party, as rules of decision in the case, in the same manner and to the same effect as to individuals. That the verdict of the jury, and judgment thereon, against the United States, is equally conclusive in ascertaining their legal indebtedness as when rendered against a citizen of the State; and that this verdict, rendered in the United States circuit court for the eastern district of Pennsylvania, in the case of the United States *vs.* James Reeside, in which the jury find for the defendant, and certify that the plaintiffs are indebted to the defendant in the sum of \$188,496.06, is "a debt of record;" that it is a judgment upon the matters in issue, and its payment is left to the faith of the United States.

The authority cited for the effect to be given to this particular verdict is the first section of the Pennsylvania act of assembly of 1705, (Smith's laws, 49—Franklin's laws, 88,) which enacts: that "if it appear to the jury that the plaintiff is overpaid, then they shall give in their verdict for the defendant, and, withal, certify to the court how much they find the plaintiff to be indebted or in arrear to the defendant more than will answer the debt or sum demanded; and

the sum or sums so certified shall be recorded with the verdict, and shall be deemed a debt of record."

The law just quoted is applied, according to the decision of the Court of Claims, to this case, by the 34th section of the act of 1789, (1 Statutes, 92,) which provides: "That the laws of the several States, except when the Constitution, treaties, or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision, in trials at common law in the courts of the United States, in cases where they apply." Under the application of this law as a rule of decision in this case, the court decides that the finding of the jury became a debt of record against the United States, and not having been impeached by a writ of error or otherwise, cannot now be impeached by any other authority; and the court further decides, that the laws of Pennsylvania, requiring the defendant to pay interest at the rate of six per cent. upon judgments against him, incurred for the United States this "debt of record," bearing interest under the same laws at the rate of six per cent. The court report a bill in accordance with these views, which has passed the House of Representatives.

But there are other considerations urged on the part of the claimant, in support of the verdict in this case, which arise on the act of Congress, passed on the same day as the general act of 1836, for the settlement of the accounts of Stockton and others. The claims specified in that act were analogous to those of Reeside. In reference to this act, Judge Baldwin, in his charge to the jury in Reeside's case, remarks: "As we cannot presume that Congress intended to make either an odious or unjust discrimination between the claims of Stockton and Stokes and Moore, and those of other contractors, for similar services under similar circumstances and contracts, this law has an important bearing on this case in several particulars, as a clear and decisive indication of the true meaning of the general act of 1836." And amongst others: "That a court and jury, acting under the 17th section of the act of 1836, on a suit by the Postmaster General, are authorized and bound to proceed by the same rules as the Solicitor, under the special act of the same date;" and that "it was the intention of Congress to transfer to the Solicitor the same powers which the act of 1825 vested in the Postmaster General, in adjusting similar claims, and to put the successor of Mr. Barry in the same position of duty to credit the contractor with the allowances of the Solicitor as he was to credit those made by Mr. Barry, or to allow such as were equitable." Under that law the Solicitor awarded \$161,000, including interest; the Judiciary Committee of the Senate reported that the Solicitor's award was final, and could not be set aside on any ground that would not annul an award between private parties before a judicial tribunal, nor be revised by Congress.—(Senate Doc., 2d session, 24th Congress, No. 88.) The award of the Solicitor was also affirmed by the Supreme Court.—(12 Wheaton, 6.) It is clear, therefore, that the award of the Solicitor, in adjudicating these claims, was conclusive upon the government.

It had the same effect as the decision of the Postmaster General under the broad powers conferred upon him by the act of 1825, under which all these transactions were had. Under that law the Post-

master General was auditor, comptroller, and register, of his department. He certified and settled the accounts, being sole arbiter as to their justice and equity. He had the sole power to bring suits for the recovery of debts due the department—which must be in his own name—and was consequently sole judge whether a balance was due or not. His judgment or settlement of an account was final and full authority for the payment of any balance found due.

“So that the only peculiarity in the special act of 1836” authorizing the Solicitor of the Treasury to settle Stokes’ accounts, is what arose from the state of things which led to its adoption. “It was sustaining an appeal from the decision of the Postmaster General, then in office,” in reference to his revision of the acts of his predecessor.

Judge Baldwin says: “Congress selected an officer to perform the very same duties which belonged to the Postmaster General in ordinary cases, and the effect of this substitution was to give the same power and prescribe the same rules to the Solicitor, in acting on the claims of contractors, as the Postmaster General already possessed as to transactions prior to 1836, and to compel him to give credit for the amount awarded. There is no one reason given in the report of the Senate committee or in the opinion of the Supreme Court, that would not equally apply to the allowance of the same credit as the Solicitor gave, if done by the Postmaster General, or which are not appropriate rules for a court and jury in a suit by the United States to recover back money under the 17th section of the act of 1836.” It can hardly be doubted that it was the design and intent of this 17th section to afford to the contractors generally the same measure of just and equitable relief in regard to their disputed accounts, which had just been granted to Stokes and others by special act; the only material difference being that the circuit courts were constituted the arbiters instead of the Solicitor. That this was the design and object is evident, from the fact that this section does not propose to operate upon or apply to any future case, but refers solely to past transactions, and the suits brought under it stand upon a footing entirely different from ordinary suits brought by the United States. The object was to afford a tribunal to test the power of the then Postmaster General to review the proceedings of his predecessor. He had, as he reported to the President, suspended numerous credits and recharged various sums which he thought had been improperly allowed by Mr. Barry, by which he greatly reduced the apparent debts of the department. To test the legality, the justice, and equity of these proceedings, was the express object of the special act of 1836, and the evident object of the 17th section of the general act. Indeed, this section is in its nature and effect a special act. It has no necessary connexion with any other portion of the act in which it is imbodyed. Its operation is limited, in terms, to transactions that had transpired and that could not transpire again. It provides for the adjustment of a specific class of cases in a particular way. It makes them an exception to the general principles of law and subjects them to prescribed rules of adjudication. The effect of the decisions, therefore, must be deter-

The committee, therefore, believing that the ends of justice cannot be better attained than by the passage of the bill as it came from the Court of Claims and has passed the House of Representatives, report it back to the Senate, without amendment, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1857.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany bill S. 488.]

The Committee on Pensions, to whom was referred the petition of Mrs. Minerva Catlett, widow of the late Doctor Hanson Catlett, of the United States army, praying a pension be granted her, beg leave to report :

That it appears, by testimony of Ann F. Hampton, that said Minerva Catlett is the widow of Doctor Hanson Catlett, late a surgeon in the United States army, and that said Minerva still remains a widow. The petitioner claims a pension for the reason that her husband, Doctor Hanson Catlett, died of a disease contracted in the military service of the United States and in the line of his duty. By an official statement of the Adjutant General of the United States army, it appears that Doctor Hanson Catlett was appointed surgeon's mate March 27, 1804, and resigned November following—was appointed surgeon's mate in the 1st infantry February 18, 1813, and appointed surgeon September 9, 1814, and disbanded in June, 1815; appointed post surgeon May 3, 1816, to rank from February 18, 1813, was retained at the reduction of the army in May 1821, and died October 21, 1824.

Upon an examination of the testimony presented to the committee, it is considered a meritorious claim. Your committee therefore report the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1857.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of George W. Pittman, praying a pension may be granted him for disability incurred while serving in the United States army in Mexico, beg leave to report :

That the petitioner claims to have served in the Mexican war. I appears he belonged to Captain Bullen's company, first regiment Kentucky volunteers, and served from the 17th of May to the 26th of August, 1846, when he was discharged on a surgeon's certificate, which reads as follows :

I hereby certify that George W. Pittman, a corporal of Captain Bullen's company of riflemen, the 10th company of the Louisville Legion, first regiment Kentucky volunteers, is incapable of performing the duties of a soldier, and therefore, in the opinion of the undersigned, the interest of the service requires that he should be discharged from the army for the following reasons : Said Pittman, when young, received a severe injury of his foot ; it appeared to have got pretty well, but the exposure of the present campaign has again disabled it, and shown that he is not capable of undergoing the duties of an active soldier.

THOMAS L. CALDWELL,
*Surgeon, Louisville Legion, 1st regiment
Kentucky Volunteers.*

CAMP NEAR CAMARGO, MEXICO,
August 26, 1846

Attached to the above certificate the following certificate appears :

To all whom it may concern : Know ye that Geo. W. Pittman, of Captain Bullen's company of the 1st regiment of Kentucky volunteers, who was enlisted on the 17th day of May, 1846, to serve for one year, is hereby honorably discharged from the army of the

United States, by reason of surgeon's certificate, setting forth, &c., (see certificate.)

Said Geo. W. Pittman was born in the State of Virginia, is thirty-five years of age, five feet five inches high, dark complexion, dark eyes and hair, and by profession a printer.

Given at Camargo, Mexico, this 26th day of August, 1846.

STEPHEN ORMSBY,

Colonel commanding L. L., 1st regiment Ky. Vol.

Z. TAYLOR,

Major General United States Army, commanding.

It also appears that, some nine months afterwards, Surgeon Thomas L. Caldwell issued to said Pittman the following certificate:

I, Thomas L. Caldwell, surgeon in the United States army, and lately on duty with the Louisville Legion, 1st regiment of Kentucky volunteers, do certify that Geo. W. Pittman, corporal in Captain Bullen's company, company K of said regiment, was discharged from the service of the United States on account of disability incurred in the course of such service and in the line of his duty as a soldier.

THOMAS L. CALDWELL,

Surgeon United States Army.

LOUISVILLE, May 28, 1847.

The applicant, Geo. W. Pittman, makes oath to the service as above stated in certificates, and also swears that he "was discharged from the service at Camargo, in Mexico, on account of disability and sickness incurred in the course of such service."

Your committee agree to the conclusion that, inasmuch as there is no explanatory proof to show the cause of the conflicting certificates given by Surgeon Thomas L. Caldwell, that the first certificate, dated at Camargo and sanctioned by his commanding general, be taken as true; therefore recommend that the prayer of the petitioner be denied, and the committee be discharged.

IN THE SENATE OF THE UNITED STATES.

JANUARY 5, 1857.—Ordered to be printed.

MR. BUTLER made the following

REPORT.

The Committee on the Judiciary, to whom was referred the credentials of the Hon. James Harlan, and the protest of the Senate of Iowa, have had the same under consideration, and submit the following statement.

The following proceedings were had in the legislature of the State of Iowa in the election of a United States senator:

SATURDAY, DECEMBER 9, 1854.

"Resolved, (the senate concurring,) That the house of representatives will meet the senate in the hall of the house on Tuesday next at 2 o'clock p. m., for the purpose of electing a senator of the United States and judges of the supreme court.

"On motion,

"The resolution was laid on the table."

DECEMBER 12, 1856.

Resolution fixing the time for the election of a United States senator was taken up and amended so as to fix Friday, the 15th instant, as the day for an election.

"Message from the senate, by Mr. Rankin, their secretary:

"Mr. Speaker: I am instructed by the senate to inform the house that the senate has concurred in the house resolution to go into joint ballot on Friday, the 15th instant, for the purpose of electing a United States senator and supreme judges, with the following amendment, viz: to strike out the words Friday, the 15th instant, at 2 o'clock, and insert this—Wednesday evening, at 2½ o'clock.

"Agreed to.

"JOINT CONVENTION OF THE TWO HOUSES.

The president of the senate acting as president of the convention, and the clerk of the house acting as secretary."

On motion, the convention proceeded to the election of a United States senator for six years, from and after the 4th day of March next.

"The president appointed Mr. Workman teller on the part of the

senate. The Speaker appointed Mr. Kinert teller on the part of the house."

The convention proceeded to a vote, which resulted in no choice.

The convention proceeded to a second ballot, which resulted in no choice.

The convention adjourned until to-morrow at 10 o'clock.

DECEMBER 14, 1854.

By order of the president the roll of the convention was called.

Same tellers as yesterday.

Motion to adjourn until Thursday next at 10 o'clock.

Motion prevailed.

"The President announced the convention adjourned until 10 o'clock a. m. Thursday, December 21."

THURSDAY, DECEMBER 21, 1854.

Joint convention of the two houses; the president of the senate acting as president of the convention, and the clerk of the house acting as secretary.

Same tellers acting.

The president having announced the purposes of the convention, and directed the roll to be called—

"The convention proceeded to vote for a United States senator for the term of six years, from and after the 4th day of March next."

After several ballots, without making a choice, the convention adjourned until the 5th day of January, 1855.

FRIDAY, JANUARY 5, 1856.

Convention met.

The president announced the purposes of the convention.

After several ineffectual ballots, on motion, the convention adjourned until to-morrow morning 10 o'clock.

SATURDAY, JANUARY 6, 1856.

"It being the hour of 10 o'clock a. m., the speaker of the house announced the same, and the special order to be a joint convention of the senate and house of representatives, pursuant to adjournment, for the purposes of electing a United States senator and judge of the supreme court.

"A committee of three was appointed to wait upon the senate, and inform that body that the house of representatives was now ready to receive the senate in joint convention," &c.

"The committee appointed to wait on the senate reported that they had discharged that duty, by proceeding to the senate chamber and delivering their message, and informing the secretary of the senate thereof. That the secretary informed the committee that the senate had adjourned over to Monday next.

"A number of the members of the senate entered the hall of the house without their president and took their seats.

"The speaker announced that the joint convention of the senate and house of representatives was now in session, pursuant to adjournment, for the purposes of electing a judge of the supreme court and a United States senator.

"Mr. Samuels rose to a question of order, to wit: Was the joint convention properly convened? The speaker announced that the convention had now convened.

"Mr. Samuels appealed from the decision of the speaker, and asked for the yeas and nays, and insisted on his appeal being decided only by the house of representatives.

"The roll of the joint convention was called, and the following members of the convention answered to their names, being a majority of both branches of the general assembly.

[Here follows the names of 57 members.]

"Those members of the convention and members of the house of representatives, except Mr. Franklin excused, who did not answer to their names, refused to answer, or retired from the hall during the call of the roll.

"The speaker announced that a majority of the members of the general assembly being present, that there was a quorum of the joint convention now convened, pursuant to adjournment, and that the appeal of Mr. Samuels could not be taken to the members of the house of representatives only.

"On motion of senator Anderson, William W. Hamilton, a senator from Dubuque county, was elected president *pro tem.* of the convention.

"The president of the senate still being absent,

"The speaker of the house of representatives in his chair, and the clerk of the house of representatives acting as secretary of the joint convention.

"The roll of the convention was called, and the following members of the convention did not answer to their names, to wit:

[Here follows the names of forty-four members.]

"On motion of Mr. Russell,

"The sergeant-at-arms was directed to notify members of the convention, who had not answered to their names, that the convention was now convened, and to request their attendance.

"Senators Ramsay and Thurston appeared on the floor of the convention, and desired to be considered as not acting in the convention.

"The sergeant-at-arms reported that he had performed his duty, as required by the convention; that a few of the members he could not find.

"On motion of Mr. Conkey,

"Further proceedings under the call were dispensed with.

"Mr. Workman, teller on the part of the senate, being absent,

"Mr. Needham was appointed in his stead.

"Mr. Kinert acting as teller on the part of the house.

"The convention proceeded to the election of a second associate judge of the supreme court;" after which "the convention proceeded to the

election of a United States senator for the State of Iowa, for the term of six years, from and after the 4th of March next. * * *

" Mr. Anderson nominated James Harlan, of Henry county.

" The convention proceeded to vote for a United States senator, being the ninth vote, which resulted as follows:

" Those voting for James Harlan were—

[Here follows the names of fifty-two members.]

" Messrs. Clark, of Marion, and Neely voted for Bernhart Henn; Mr. McAchran voted for Wm. McKay; Mr. Witter voted for James Grant. James Harlan having received a majority of all the votes cast, and a majority of the whole number of the members of the general assembly, was declared duly elected a senator of the United States, for the State of Iowa, for the term of six years, from and after the 4th day of March next.

" The certificate of election was made out and duly attested in the presence of the convention," &c. * * * *

HALL OF THE HOUSE OF REPRESENTATIVES,
January 6, 1855.

This will certify that, at an election by the general assembly of the State of Iowa, in joint convention, on Saturday the 6th day of January A. D., 1855, James Harlan was duly elected a senator to represent this State in the Senate of the United States for the term of six years, from and after the 4th day of March next.

WILLIAM W. HAMILTON,
President pro tem.

REUBEN NOBLE,
Speaker of the House of Representatives.

Attest:

JOHN R. NEEDHAM, } *Tellers.*
DAVID KINERT, }

On motion of Mr. Hills, the joint convention adjourned *sine die*, and the members of the Senate retired.

[*Journal of the house of representatives of the State of Iowa.*]

MONDAY MORNING, January 8, 1855.

Mr. Coolbaugh offered the following:

" Whereas, it is reported that the journal of the house of representatives, as read this morning in the presence of the house, alleges that a joint convention of the general assembly of this State was held in the hall of the house on Saturday the 6th instant; and whereas, it is alleged in said journal that said joint convention proceeded to elect one Norman W. Isbell as an associate judge of the supreme court of this State, and one James Harlan as a senator of the United States, for the term of six years from the 4th day of March next, therefore—

“Resolved, That inasmuch as the senate has no knowledge of any such joint convention, and did not participate in the proceedings, therefore, it hereby protests against the action of the said so-called joint convention, and declares the same to be void and of no effect.

“Resolved, That a copy of this preamble and resolution be signed by the president and certified to by the secretary of the senate, be presented to the governor of this State, and also a copy forwarded to the presiding officer of the Senate of the United States, with a request to lay the same before that body. Upon the adoption of which, the yeas and nays being demanded were ordered, and were as follows: yeas, 17; nays, 14. The preamble and resolutions were adopted.”

[Journal of the senate of the State of Iowa, 1854-55.]

AN ACT to provide for the election of United States senators and other officers..

SECTION 1. *Be it enacted by the general assembly of the State of Iowa, That at each and every regular session of the general assembly of this State, next preceding the expiration of the constitutional term of service of a United States senator, or at any session when a vacancy shall exist, at an hour to be designated by a resolution of either branch, with the concurrence of the other branch of the general assembly, the members of both houses thereof shall meet in convention in the hall of the house of representatives, for the purpose of electing a senator or senators by joint vote, in pursuance of the Constitution of the United States, to represent this State in the Senate of the United States.*

SEC. 2. *The president of the senate, or, in his absence, the speaker of the house of representatives, shall preside over the deliberations of the convention; and in the absence of both, a president pro tempore shall be appointed by joint vote.*

SEC. 3. *At any time prior to meeting in convention as aforesaid, after the time for meeting has been designated as aforesaid, each branch of the general assembly shall appoint one teller, and the two tellers thus appointed shall act as judges of the election.*

SEC. 4. *The secretary of the senate and the chief clerk of the house of representatives shall each keep a fair and correct record of the proceedings of the convention, which shall be entered upon the journals of each branch of the general assembly. The chief clerk of the house of representatives shall act as secretary to the convention.*

SEC. 5. *The names of the members of the general assembly shall be arranged by the secretary in alphabetical order, and each member shall vote in the order in which his name stands when thus arranged.*

SEC. 6. *When the convention shall be organized as aforesaid, the members present shall proceed to choose viva voce a senator or senators, as the case may be, to represent this State in the Senate of the United States. The name of the person voted for, and of the mem-*

bers voting, shall be entered in writing by the tellers, who shall, after the secretary shall have called the names of the members a second time, and the name of the person for which each member has voted, report to the president of the convention the number of votes given for each candidate.

SEC. 7. If neither of the candidates shall receive the votes of a majority of the members present, a second poll may be taken; and so from time to time, until some one of the candidates shall receive a majority of the votes of the members present.

SEC. 8. If the election shall not be completed at the first meeting, the president shall adjourn the convention whenever and to such time as a majority of the members then present shall determine; and so from time to time, until some one of the candidates shall receive a majority as aforesaid.

SEC. 9. When any person shall have received a majority of the votes aforesaid, the president of the convention shall declare him to be duly elected a senator to represent this State in the Senate of the United States; and he shall, in the presence of the members of both houses, sign two certificates of election, attested by the tellers—one of which he shall transmit to the governor, and the remaining one shall be preserved among the records of the convention, and entered at length on the journals of each house of the general assembly.

SEC. 10. Upon the reception of said certificate, the governor shall cause a credential to be made out, with the great seal of the State affixed thereto, and cause it to be delivered to such senator elect, which credential shall be in form following:

[Here follows the form of the credential.]

Laws of Iowa, 1847, pages 92 and 93.

The Constitution of the United States contains the following provision in reference to the election of United States senators:

SEC. 4. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

And the clause under which the committee are acting, as to the qualification of the gentleman, is as follows:

SEC. 5. Each house shall be the judge of the elections, returns, and qualifications of its own members. * * * *

STATE OF IOWA, to wit:

The general assembly of this State, on the sixth day of January, one thousand eight hundred and fifty-five, having, in pursuance of the Constitution of the United States of America, chosen James Harlan a senator to represent this State in the Senate of the United States, I,

James W. Grimes, governor of the State of Iowa, do by these presents certify the same to the Senate of the United States.

Given under my hand, and the great seal of the State of Iowa,
[L. s.] this twentieth day of January, one thousand eight hundred and fifty-five.

JAMES W. GRIMES.

By the Governor :

GEORGE W. McCLEARY,
Secretary of State.

The foregoing statement of facts and recital of clauses of laws and the constitution present all the questions involved in the controversy growing out of the contested election under consideration. From the view which a majority of the committee have taken of these questions, they have come to the conclusion that the sitting member (Mr. Harlan) has not been duly elected a senator of the United States by the *legislature* of Iowa.

Resolved, That the seat of the aforesaid gentleman be declared vacant.

A. P. BUTLER,
Chairman.

IN THE SENATE OF THE UNITED STATES.

JANUARY 9, 1857.—Ordered to be printed.

Mr. FISH made the following

REPORT.

[To accompany bill S. 496.]

The Committee on Naval Affairs, to whom was referred the memorial of James D. Johnston, a lieutenant in the navy, asking "authority to be granted to the accounting officers of the treasury to settle his accounts as naval storekeeper at Valparaiso, Chili, according to equity and justice," have carefully examined the same, and submit the following report:

That in the investigation of the grounds upon which the memorialist claims relief, they have been governed by a strict regard to the rule that in all such applications to Congress it should be established beyond question that a proper degree of diligence in the discharge of the duties entrusted to him had been shown and exercised by the petitioner. The fact of the loss or losses having occurred at or during the time specified, and in the manner set forth in the memorial, should be proven to the satisfaction of the committee. It should also appear that every necessary precaution was taken by the person to whom the public money and property were entrusted to protect the government, by every means in his power, against loss.

To arrive at just and intelligent conclusions upon these points, the committee have examined with care the certificates and depositions presented by Lieutenant Johnston, and have also addressed inquiries to the honorable Secretary of the Navy, respecting his professional character and the duties required of him while at Valparaiso. The replies to these inquiries are such as to convince the committee that Mr. Johnston sustains the highest reputation in his honorable profession, and that his official integrity and efficiency are beyond question. His position as commanding officer of a stationary storeship in a foreign port, having charge of the large supplies of government stores, (forwarded to that point for the use of our squadron in the Pacific,) and at the same time of the money accounts of the officers and crew of the vessel, was one of unusual responsibility, requiring more than ordinary professional qualifications and abilities to fill with credit to himself and justice to the government. Mr. Johnston evidently appreciated the necessity for providing himself with all the ordinary means of assistance in guarding against the loss of any por-

tion of the property committed to his charge, as he made repeated applications to the Navy Department for an additional officer and a small guard of marines for this especial purpose, which will be shown by the following correspondence:

UNITED STATES NAVAL STOREKEEPER'S OFFICE,
Valparaiso, February 14, 1856.

SIR: I have the honor to acknowledge the receipt of your communication of the 22d November, 1852, informing me that the United States store ship "Fredonia" is to be turned over to me as a permanent store ship in this harbor, and enclosing an order to her present commander, (Lieutenant Chatard,) to return to this place after having landed the troops now on board in San Francisco, for the purpose of making this transfer.

In view of the importance of guarding against the probable loss of public property by its necessary exposure during the receipt on board and delivery from the store ship of the stores, &c., to be kept on board, and also of the necessity of preventing any improper communication with the shore, or other vessels during the night, I respectfully request that a corporal's guard of marines may be added to the complement of men and officers originally prescribed for the stationary store ship.

I have the honor to be, very respectfully, your obedient servant,

JAMES D. JOHNSTON,

Lieut. Comd'g and U. S. Naval Storekeeper.

HON. SECRETARY OF THE NAVY,
Washington, D. C.

Approved by, and forwarded through Commodore Dulany, commanding the Pacific squadron ; but never answered.

J. D. JOHNSTON.

UNITED STATES STORE SHIP FREDONIA,
Valparaiso, September 14, 1853.

SIR: I have the honor to inform you that the United States store ship "Fredonia" arrived at this place from San Francisco on the 12th instant, and that in compliance with the instructions issued from the Navy Department, under date of November 22, 1852, Lieutenant Commanding Chatard has transferred to me the command of this vessel.

The officers and crew at present attached to the ship will be regarded as supernumeraries on board, and will be transferred to the frigate "St. Lawrence" upon her arrival at this port, with the exception of such of their number as may be selected for the vessel in her capacity of stationary store ship.

I avail of this opportunity to represent to the department the inadequacy of the complement of officers and men allowed to the vessel in her new character, and respectfully urge upon your consideration the

importance of increasing the number by allowing her one master's mate, one cooper, four seamen and seven marines, in addition to the complement prescribed in my orders bearing date September 16, 1852.

I have the honor to be, very respectfully, your obedient servant.

JAMES D. JOHNSTON,
Lieutenant Commanding, &c.

Hon. J. C. DOBBIN,
Secretary of the Navy.

UNITED STATES STORE SHIP FREDONIA,
Valparaiso, September 14, 1853.

SIR: I take pleasure in informing you that the *Fredonia* reached this place on the 12th instant, and that I have relieved Lieutenant Chatard in the command, as he desired to return home by the steamer of to-morrow.

I am now engaged in mooring the vessel according to the regulations of the port, and putting her in proper condition for receiving the stores on board, which can scarcely be accomplished in less than a month from this date.

I have made application to the department by this mail to increase the complement of officers and men allowed the ship, as it will be altogether impracticable to keep her in proper condition, and guard with security the public property on board, with the small number originally prescribed. I sincerely hope that you will consider this subject favorably, and aid me in the accomplishment of the object.

I am, very respectfully, your obedient servant,

JAMES D. JOHNSTON,
Lieutenant Commanding, &c.

WM. SINCLAIR, Esq.,
Chief of Bureau of Provisions and Clothing.

NAVY DEPARTMENT, *October 31, 1853.*

SIR: Your letter of the 14th ultimo has been received.

The complement of officers and men was prepared after due consideration of the new character to be given to the store ship "*Fredonia*." On the arrival of Commodore Dulany at Valparaiso, you will make a full report of the condition as well as the wants of the "*Fredonia*" to him, and if he considers additional men necessary for her safety, and security of the public property on board of her, he will, on presenting this letter to him, consider himself authorized to add six seamen to the number already allowed to that vessel as a stationary storeship.

Very respectfully, &c.,

J. C. DOBBIN.

Lieutenant J. D. JOHNSTON,
Commanding ship "Fredonia," Valparaiso, Chile.

The following letters from the Hon. Secretary of the Navy, the chief of the Bureau of Provisions and Clothing, and several of his brother officers, will afford the most ample testimony as to the character of the memorialist for integrity and professional excellence.

NAVY DEPARTMENT, *August 12, 1856.*

SIR: I have the honor to acknowledge the receipt of your letter of the 1st instant, transmitting a memorial and papers in the case of Lieutenant James D. Johnston, of the navy.

In reply to your inquiries, I have to state, that Lieutenant Johnston was in command of the "Fredonia" storeship, and was by a subsequent order, also, assigned to the special duty of taking charge of the public stores, and a clerk was given him to aid him. He had also under him a master, passed midshipmen, a boatswain, and a few seamen. His position, therefore, was that of commanding officer and naval storekeeper. According to general usage and the rules, the officer in command does not keep watch unless in an emergency. The department was unquestionably of opinion that the officer in command, by his own efforts and the assistance of two officers and a boatswain, could well take care of the public property, or it would have made other arrangements.

Lieutenant Johnston bears the reputation of a most excellent officer. The officers who certify to his official diligence are also estimable and reliable. I should deem it improper to venture any expression of opinion without thorough investigation into the manner of conducting his business—the frequency of inventories, the size of the articles taken, and the length of time during which this pilfering was perpetrated. Mr. Johnston, in a recent interview, informs me that seven or eight bales of pea-jackets were stolen, and thinks that they might have been put on the Independence when other goods were being delivered. I have suggested to him a postponement of his application.

I am, respectfully, your obedient servant,

J. C. DOBBIN.

Hon. S. R. MALLORY,

Chairman Committee on Naval Affairs, U. S. Senate.

NAVY DEPARTMENT,
December 30, 1856.

SIR: I am in receipt of your communication of the 4th instant, in regard to your claims pending before Congress for relief in the case of the loss of public property on board the Fredonia, while under your command as a store ship at Valparaiso.

You seem to think that the statements made by me, in reply to certain inquiries from the Naval Committee of the Senate, "produced an injurious impression upon them," and you desire me to address,

either to yourself or to the committee, such a communication as will present the case in a more favorable point of view.

I will remark here that the certificates of brother officers, and circumstances presented in defence of your case, were by you laid before the committee, who were as competent as any persons to form a correct judgment as to whether they were sufficient to relieve you from any liability for negligence or inattention when in charge of public property.

If there be any facts unknown to them, I will with pleasure aid you to present them. The chief considerations in your behalf which would operate upon me, were I on the committee, are two-fold : *First*, you have borne the reputation of not merely a fair, but an excellent officer. That would, with me, create a strong presumption in your favor. *Secondly*, your orders placed you in the responsible positions of lieutenant commanding the sloop, of purser, and of naval storekeeper.

I have said in my official report that there should be a small corps of assistant pursers, so that military officers, uneducated in the matters of accounts and stores, should never be subjected to the necessity of discharging a duty—an unmilitary duty—for which they have generally been found incompetent. It is true that you applied for a guard of marines. They were not granted, I assume, because they were not deemed necessary, and therein the department differed from you.

You can use this letter as you think proper, for I am sure my respect for you and confidence in you are such that I should be pleased to hear that you have presented such facts and circumstances as to cause the committee, in the discharge of their duty, to feel justified in affording you relief. That, however, is a question for their better judgment.

Very respectfully, your obedient servant,

J. C. DOBBIN.

Lient. JAS. D. JOHNSTON,
United States Navy, Washington.

BUREAU OF PROVISIONS AND CLOTHING,
May 3, 1856.

SIR: The bureau having examined the memorial of Lieutenant J. D. Johnston, with the papers accompanying it, has the honor to report, that as to the facts connected with the alleged robbery on board the "Fredonia," the bureau can add nothing to the depositions and statements accompanying the memorial. But it takes occasion to say, that the correspondence, returns, and the whole course of that officer while at Valparaiso, have shown him to be prompt, vigilant, and very attentive to his duties as naval storekeeper.

The chief of the bureau begs leave to add that nearly every purser in the service can say, from personal experience, that however vigilant he may have been in the performance of his duties, more or less losses

from stealing, in the purser's department, are invariably suffered on board men-of-war.

The memorial and papers accompanying it are herewith returned.
I am, sir, very respectfully, yours, &c.,

H. BRIDGE,
Chief of Bureau.

Hon. J. C. DOBBIN,
Secretary of the Navy.

NAVY DEPARTMENT,
Bureau of Provisions and Clothing, July 30, 1856.

SIR: In answer to your letter of this date the bureau replies, that there is no regulation requiring naval storekeepers to take inventories of the stores in their possession at stated periods, and that no direction to take inventories at any time was contained in your official instructions from this bureau.

The commanding officers of foreign squadrons order general surveys of stores at naval depots, when deemed necessary by them, or when directed to do so by the department. But it is believed that no settled custom exists calling for such surveys. Indeed, it would be difficult to frame a rule which could always be carried out. It would be expensive and very troublesome when a store vessel is full of stores to break out and take an inventory of them. Besides, the stores would be liable to be plundered by the men who were engaged in the work.

You are at liberty to use this letter as you may think proper.

I am, sir, very respectfully, your obedient servant,

H. BRIDGE,
Chief of Bureau.

Lieutenant JAS. D. JOHNSTON,
U. S. Navy Yard, Washington, D. C.

The facts of the case, as represented by the memorialist, and corroborated by the testimony with which he has furnished the committee, are substantially as follows:

In the month of February, 1855, he was in command of the United States store ship "Fredonia," stationed permanently in the harbor of Valparaiso, Chili, and was at the same time charged by the Navy Department with the duties of naval storekeeper and purser.

That in his capacity of naval storekeeper he was authorized to employ a clerk at a salary of six hundred dollars per annum, and accordingly he appointed to that office a man who was at that time serving on board the "Fredonia" as purser's steward, and who, the memorialist avers, was strongly recommended by the officers under whom he had been employed during the preceding ten months. That the duties devolving upon this clerk made it necessary that he should

have frequent access to the store-room in which the clothing and small stores were kept for issue to the crew of the vessel, which store-room was kept locked at all times and the key left in charge of the executive officer. That this store room was situated on the berth deck of the ship, and constituted not only the safest but the only place on board where the stores could have been kept, with a due regard to their preservation from the effects of dampness and vermin. That the memorialist appears to have realized the importance of the trust confided to him, and to have reposed no greater degree of confidence in his clerk than was necessary to a proper discharge of his duties, and that he at all times required the officers under his command to superintend the receipt and delivery of stores to and from the vessel. That although the complement of officers prescribed by the Navy Department for the vessel was limited to one master and one passed midshipman, she was never left without one of those officers on board, who exercised a strict supervision over the conduct of the crew and any duties that might be required of them. That the memorialist was himself on board the vessel at all times when his duties required or would permit him to be, and exercised a vigilant and diligent care over all the government property entrusted to his keeping, as is shown by the certificates of all the officers who served under his command, as well as of many others who had the most favorable opportunities of observing his conduct in the three separate capacities he was required to fill.

That notwithstanding all his attentions to the interests of the government, it was utterly impossible for him to be cognizant of all the occurrences on board the vessel, and it would seem unjust that he should be held responsible for the dishonesty of one to whom he was compelled to confide that portion of his duties for the discharge of which the Navy Department had provided him with a clerk, and in whose integrity he had every reason to believe.

That after serving on board the "Fredonia" for the period of seventeen months, this clerk deserted; and upon taking an inventory of the clothing and small stores remaining on board immediately afterwards, it appeared that articles coming under those heads had been taken from the ship to the value of about one thousand dollars. The facts were communicated at once to the Navy Department, and every effort made to ascertain the manner in which the theft or thefts had been committed. From the depositions of two of the crew, taken before the United States consul, and the certificates of acting Master Wells and passed Midshipman Watmough, it will be seen that the clerk, Elias W. Hayes, was guilty of acts which have given rise to the belief that he carried on a system of petty robbery and smuggling during the greater part of the time he was on board, which he conducted so adroitly (his facilities being necessarily great) as to elude the vigilance of the officers in charge of the ship.

That, upon taking a subsequent inventory of the clothing on board the Fredonia in the month of November, 1855, it was discovered that there was a deficiency in the supply of that article on board, according to the account taken in the month of March previous. This second robbery could only have been effected by a general combina-

tion of the crew of the vessel, and as the small complement of officers allowed her by the Navy Department (there having been but *one* during the last two months of the memorialist's command) precluded the practicability of keeping a watch of officers, he was compelled to rely upon the crew for the night-watches, during which they undoubtedly committed the robbery, by abstracting the missing articles from the ship in small quantities at a time. With the aid of confederates from the shore, a system of smuggling might thus have been carried on for months without much risk of detection.

There are many instances on record where property has been stolen from the public vessels, guarded as it usually is by all the officers and marines of a regular man-of-war, and the officer in charge has been relieved from the pecuniary responsibility by act of Congress; and it is well known that depredations of the character in question can only be committed with any hope of success while the vessel is in port; consequently, the *Fredonia* was more exposed to them than any cruising ship, while she was denied the usual and necessary means of preventing them.

The committee will refer only to one case as a precedent for the allowance of this claim, (see act for the relief of James Glynn, chap. xlix, vol. 10, page 749, Stat. at Large,) as the evidence which has been presented to establish its justice and equity is considered conclusive of the fact that Lieutenant Johnston guarded the public property committed to his charge in at least as faithful a manner as if it had been his own.

The total amount of property stolen or embezzled is two thousand and forty-three dollars and eighty cents.

In consideration of the high professional reputation sustained by Mr. Johnston, and of the ability and diligence he has manifested in the discharge of the various and responsible trusts imposed upon him by the Navy Department, without affording him sufficient means to enable him to guard against the loss of a portion of the property under his charge, the committee are clearly of opinion that he cannot justly be held responsible for the reimbursement of such loss. They therefore report a bill for his relief, and recommend its passage.

NAVY DEPARTMENT,
September 16, 1852.

SIR: You are hereby detached from the Observatory, and you will proceed by the most expeditious route to Valparaiso, Chili, and report to the senior naval officer present, for command of the store ship in that harbor.

You are authorized to make requisition on such officer for—1 passed midshipman, 1 boatswain's mate, 1 carpenter's mate, 1 officer's steward, 1 ship's cook, 4 seamen, and 4 ordinary seamen, for duty on board that vessel, who will be considered as on sea-service while attached to her.

You will receive your instructions from the Bureau of Provisions and Clothing.

I am, respectfully, &c.,

JOHN P. KENNEDY.

Lieut. JAS. D. JOHNSTON,
U. S. Navy, Washington, D. C.

NAVY DEPARTMENT,
September 18, 1852.

SIR: In addition to your duties as commander of the stationary store ship at Valparaiso, you will be regarded as in charge of the stores on board, and to enable you to discharge this trust you will be allowed a clerk, whose compensation will be at the rate of six hundred dollars per annum.

You are authorized to ship at Valparaiso a crew not to exceed the complement with which you have been furnished.

You will also be charged with the accounts of the officers and men on board, and to enable you to pay them you will draw upon this department for such sums, from time to time, as may be necessary for that purpose.

The term of the enlistment of the crew is not to exceed one year.

I am, respectfully, your obedient servant,

JOHN P. KENNEDY.

Lieut. JAS. D. JOHNSTON,
*Appointed to command the U. S. store ship
to be stationed in the harbor of Valparaiso.*

U. S. NAVY DEPARTMENT,
Bureau of Provisions and Clothing, February 6, 1856.

I hereby certify that the annexed is a true copy of a letter from Lieut. Jas. D. Johnston, with its several enclosures, numbered 1 to 4, both inclusive, the originals of which are on file in this bureau.

H. BRIDGE,
Chief of the Bureau.

Be it known, that Horatio Bridge, whose name is signed to the above certificate, is now, and was at the time of so signing, chief of the Bureau of Provisions and Clothing in the Navy Department, and that full faith and credit are due to all his attestations as such.

In testimony whereof I have hereunto subscribed my name, and caused the seal of the Navy Department of the United States to be affixed, at the city of Washington, this sixth day of February, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eightieth.

J. C. DOBBIN,
Secretary of the Navy.

No. 1.

UNITED STATES STORE SHIP FREDONIA,
Valparaiso, Chili, March 26, 1855.

SIR: I have the honor to inform the bureau that Mr. E. W. Hayes, former naval storekeeper's clerk at this depot, deserted from this vessel on the 17th ultimo, having taken passage on that day for New York in the American ship Alert, Captain Birsley.

As Mr. Hayes had charge of all the accounts of the stores on board this ship, and his sudden desertion after having been one year and a half on board in the capacity of clerk, during which time he always appeared perfectly satisfied with his situation, gave rise to a suspicion that he had committed some act of fraud or misconduct in which he apprehended detection, I considered it my duty, as early as practicable, to have an inventory taken of all the stores on board, the nature of which rendered it possible for him to have smuggled out of the vessel.

Accordingly an inventory was immediately taken of the clothing and small stores on board, and I regret to have to report that a large quantity of articles coming under those heads have been found to be missing. I have not been able so far to procure any positive evidence tending to convict Mr. Hayes of having abducted these articles, but two of the crew have expressed their readiness to make a deposition before the United States consul at this place, to the effect that they pulled one of the boats of this ship along side of the Chilian ship Rosario, commanded by an Englishman by the name of Handyside, with Mr. Hayes in her, carrying with him two large bundles which he took from the Fredonia.

The difficulty of procuring any positive testimony in a case of this sort will, I hope, be so apparent to the bureau as to induce it to exact no other than that amount of circumstantial proof I may be enabled to obtain to satisfy it that the articles in question have been disposed of by Mr. Hayes in the manner suspected.

The facility for smuggling on shore at this place articles of the description mentioned is so great that it would be almost impossible to guard against its being done by any one disposed to perpetrate similar acts of villany while occupying the position of naval storekeeper's clerk, as the stores for issue to the crew of the ship are necessarily kept in a separate room, under his immediate charge, and the packages containing them are necessarily broken.

You will please find enclosed the depositions of Solomon Marling and John Hutchins, the two seamen who were in the boat alluded to; also the certificate of Passed Midshipman P. T. Watmough, stating all that can now be ascertained with regard to the probable manner in which the missing articles have been disposed of.

I am, sir, very respectfully, your obedient servant,

JAMES D. JOHNSTON,

Lieut. Com'g, and U. S. Naval Storekeeper.

HORATIO BRIDGE, Esq.,

Chief of Bureau of Provisions and Clothing,

Washington, D. C.

No. 2.

UNITED STATES CONSULATE,
Valparaiso, March 27, 1855.

To all people to whom these presents shall come or may concern, I, George B. Merwin, consul of the United States for this port, send greeting :

Now, know ye, that on the day of the date hereof before me personally appeared Solomon Morling, who, being by me first duly sworn upon the Holy Evangelists of Almighty God, voluntarily, freely, and solemnly does depose and say : That he is a seaman in the service of the United States, on board the United States ship Fredonia, and has been for the last two and a half years past.

That during said time there was on board said ship Fredonia one Elias W. Hayes, who acted as naval storekeeper's clerk.

That during the fore part of the month of December, 1854, deponent was one of the crew in a boat belonging to said ship which took said Hayes alongside the Chilian ship Rosario, then at anchor in the port of Valparaiso ; that said Hayes had two pretty large packages which deponent thought to be dry goods, flannels or sheetings ; said Hayes took said packages from the boat up on board the ship Rosario, and left them on board, and inquired for the captain of the ship. Deponent saw said Hayes afterwards in conversation with the captain of the Rosario, at that time on board.

Deponent further says, that the said Hayes took the before-mentioned packages from the store room on board the said ship Fredonia, according to the deponent's best knowledge and belief.

And the deponent further says, that the store room on the ship was kept locked, and the key deposited in the room of the executive officer of the ship, and Mr. Hayes, as clerk, had at all times access thereto.

SOLOMON MORLING, his x mark.

Witness to Solomon Morlin's mark,

GEORGE B. MERWIN,

Subscribed and sworn before me,

GEORGE B. MERWIN, *Consul of U. S.*

No. 3.

Also, at the same time and place personally appeared John Hutchins, who, being first by me duly sworn upon the Holy Evangelists of Almighty God, voluntarily, freely, and solemnly declares, deposes, and says: That he was a seaman in the service of the United States, on board the United States ship "Fredonia," for the last two years and a half past; that during said time there was on board said ship one Elias W. Hayes, who acted as naval storekeeper's clerk; that in the early part of December, 1854, deponent was ordered by said Hayes to take him on board the Chili ship "Rosario," then in the harbor of Valparaiso; that when deponent went into the boat, he saw in her two packages, which he thought and believed were dry goods of some description; that when the boat came alongside the "Rosario" the said Hayes took the packages on board, and left them on the "Rosario;" deponent did not get out of the small boat when along-

side the "Rosario;" and the deponent further declares that the store room on said ship was kept locked at all times, and the key deposited in the executive officer's room, to which said Hayes had access at all times, and further this deponent saith not.

JOHN HUTCHINS.

Sworn to and subscribed before me.

GEORGE B. MERWIN, *Consul of U. S.*

UNITED STATES STORE SHIP FREDONIA,
Valparaiso, Chili, March 26, 1855.

SIR: I regret to have to inform the department that upon taking an inventory of the public stores on board this ship, taken in consequence of the sudden desertion of Mr. E. W. Hayes, formerly naval storekeeper's clerk, on the 17th ultimo, I have discovered to be missing a large quantity of clothing and small stores, which there is every reason to believe were smuggled out of the ship and sold on shore and in the harbor by Mr. Hayes. I therefore respectfully request that you will take the necessary measures to procure his apprehension upon his arrival in New York, for which port he sailed on the 17th ultimo in the American ship Alert, Captain Birsley.

I am now engaged in procuring all the evidence practicable, in order to secure his conviction, and will probably be enabled to forward it by the mail which will leave here on the 15th proximo.

I am, sir, very respectfully, your obedient servant,

JAMES D. JOHNSTON,
Lieutenant Commanding.

Hon. J. C. DOBBIN,
Secretary of the Navy, Washington.

No. 4.

U. S. STORE SHIP "FREDONIA," *March 25, 1855.*

SIR: In compliance with your request, "that I would furnish you with a written certificate in relation to all that I know or suspected of Mr. Hayes', your late clerk, malappropriation of government stores committed to his keeping," I have simply to state that on one occasion, some months since, the exact time I cannot recall, I observed Mr. Hayes leaving the vessel with rather a bulky bundle in his hands, and I was struck with his evident desire not to excite observation; yet such had been his previous conduct, so free from suspicion or distrust on the part of the officers of this vessel, that I was loth to give expression to my suspicions, and permitted the incident to pass without further inquiry or notice, judging that my suspicion might be ill founded.

This is the only occasion upon which my suspicions were excited that I can recall with any certainty.

I am, sir, most respectfully, your obedient servant,

P. G. WATMOUGH,
Passed Midshipman United States Navy.
Lieut. Comd'g. J. D. JOHNSTON, *Store Ship Fredonia.*

U. S. STORE SHIP FREDONIA,
Valparaiso, Chili, March 27, 1855.

SIR: I hereby certify that the government stores on board this vessel have been properly cared for, and that no article has, to my knowledge or belief, been issued improperly.

From the circumstance of Mr. Hayes, who held the situation of storekeeper's clerk, having absconded suddenly, I am led to believe that he did so in consequence of having embezzled government property, which it was in his power to do, as no one on board suspected him of dishonesty, and his facilities for smuggling were very great.

Respectfully, your obedient servant,

C. H. WELLS,
Acting Master, U. S. Navy.

Lieut. Com'g JAS. D. JOHNSTON, *U. S. N.,*
Commanding U. S. Store Ship Fredonia, Valparaiso, Chili.

U. S. SHIP FREDONIA, VALPARAISO,
November 10, 1855.

This is to certify that, being present at the opening of the *slop room* of the United States store ship Fredonia, for the purpose of taking an inventory of the contents thereof, a deficiency of the following articles was ascertained: Nine bales, ninety reefing jackets; four bales, two hundred flannel drawers; two bales, twenty-five blue cloth jackets each; two and a half bales, fifty blankets; which deficiency must have occurred, according to the ship's books, since an inventory was taken in March last.

Now, the intent of this certificate is to state, that from an examination of the *slop room*, it is evident to me that it is the proper place for storage of the clothing, and that it is secured with locks in the ordinary manner; and, further, from hearing the statements of the officers of the ship, it appears to me that there is but one way of accounting satisfactorily for the disappearance of this amount of clothing, viz: the entering the *slop room* with false keys during the night, and abstracting the same.

As the night watches of this ship are necessarily kept by the crew, dishonest men, so disposed, could have effected such robbery without much risk of detection, particularly if aided by confederates from the shore.

A corporal's guard of marines, or additional officers for night watches, would be preventive of similar depredations upon the public property.

WM. REYNOLDS,
Lieutenant U. S. Navy.

STORE SHIP FREDONIA, VALPARAISO,
November 12, 1855.

SIR: Being present when you overhauled the *slop clothing*, in order to give your relief, (Lieutenant Reynolds,) an inventory of the same,

at which time many articles were found short, I deem it but due you to say, that since I have been on board every care and attention, in my opinion, has been observed towards the safe keeping and safety of all committed to your charge.

It may be that these articles were stolen by some one attached to the ship, and smuggled on shore at night, as, owing to the fact that a regular watch cannot be kept by the officers, there not being enough for such duty, everything depends on the honesty of the lookouts, acting as quartermasters, and, consequently, if so disposed, their opportunities are good to carry through such acts; therefore I do not hesitate to say you have done all in your power towards preserving the government from loss.

I am, respectfully, yours,

DAWSON PHENIX,
United States Navy.

Lieut. Com'g J. D. JOHNSTON,
U. S. Store Ship Fredonia.

NAVY YARD, GOSPORT,
July 9, 1856.

DEAR SIR: During my visits to Valparaiso, in the United States frigate St. Lawrence, I had frequent occasion to visit the store ship Fredonia, then under your command. I always found an officer in charge, and the appearance of the ship indicated attention and vigilance on the part of the officers in charge of her. Stores were always ready when sent for, and promptly delivered. The limited number of men allowed the Fredonia rendered it necessary to send additional men on board from the ships requiring stores; and at such times stores of all kinds were unavoidably much exposed, and, knowing sailors as I do, should be much surprised to hear that none were missing.

Very truly, your obedient servant,

C. H. POOR,
Commander and late executive officer of the St. Lawrence.
Lieutenant. J. D. JOHNSTON.

I certify that during the time Lieutenant James D. Johnston, United States navy, was performing the duties of naval storekeeper, and commanded the store ship "Fredonia" at Valparaiso, I visited that port three several times in the United States frigate "St. Lawrence," and that on each visit I received provisions and other stores from the charge of Lieutenant Johnston, and that on the two last visits, viz: from March to April, 1854, during a stay of one month; and from October, 1854, to February, 1855, during a stay of over four months, the supplies for the "St. Lawrence" were received from the store ship "Fredonia." That great care and attention was bestowed by Lieutenant Johnston in the delivery of provisions, clothing, and other stores, to ensure correctness; and, as far as my observation extended, Lieutenant Johnston took as much care of the property

committed to his charge, to preserve them from loss, as if they had been his individual property.

I also certify that Lieutenant Johnston, when on board the "Fredonia," had but two officers permanently attached to the ship, and no marines.

Given under my hand at the navy yard, Boston, this tenth day of July, A. D. 1856.

JOHN A. BATES,
Purser U. S. N., and late Purser of the U. S.
flag ship "St. Lawrence" on the Pacific station.

FAUQUIER WHITE SULPHUR SPRINGS,
July 12, 1856.

MY DEAR JOHNSON: I yesterday received your letter of the 5th instant, forwarded here from Baltimore. I regret that a doubt should have been entertained in the mind of any one that you failed in due vigilance and care in the preservation of the public property under your charge on board the "Fredonia."

Whilst waiting the arrival of the frigate St. Lawrence at Valparaiso, I lived on board the Fredonia, then under your command, for several months. Your personal attention to your duties in provisioning the vessels of the squadron, and keeping your own vessel in order and discipline, marked you, in my mind, as an attentive and zealous officer. The limited number of your officers did not enable you to keep a regular sea watch.

Your habitual attention to your duties will, I hope, disabuse the minds of the gentlemen in Congress of any negligence on your part.

I am, very respectfully, truly your friend,

WILLIAM W. HUNTER,
Commander U. S. Navy.

U. S. NAVAL OBSERVATORY,
Washington, July 10, 1856.

I certify, on honor, that I was acting master of the United States store ship Fredonia, stationed in the harbor of Valparaiso, from the 13th September, 1853, to the 30th of June, 1855, and that during that period I performed the same duties as a watch officer, and as executive officer of the vessel as are customary on board vessels employed on similar duty while at anchor.

I certify, also, that Passed Midshipman P. G. Watmough performed the same duties as a watch officer in a most faithful and vigilant manner, and that the commanding officer, Lieutenant James D. Johnston, displayed the utmost care and attention to the interests of the government in preserving and protecting the property under his charge as naval storekeeper and acting purser.

It is my confident belief that the clothing and small stores which

were found to be missing from the ship's stores in March, 1855, were smuggled on shore in small quantities by the naval storekeeper's clerk, Elias W. Hayes, during the seventeen months he was on board.

C. H. WELLS,
Late Acting Master, U. S. N.

NAVY DEPARTMENT,
Bureau of Provision and Clothing, January 3, 1857.

SIR: Upon examination of the records of this bureau it appears that your returns, invoices, and public letters as storekeeper at Valparaiso for the first and second quarters of 1853, were made in your own handwriting, as well as your public letters for the third quarter of that year. Your returns while naval storekeeper were promptly made, and generally correct.

I am, very respectfully, sir, your obedient servant,

T. BRIDGE,
Chief of Bureau.

Lieut. JAS. D. JOHNSTON,
U. S. Navy, Washington, D. C.

NAVY DEPARTMENT,
Bureau of Construction, &c., January 3, 1857.

SIR: In reply to your application of this morning, I have to state that the store returns and vouchers received at this bureau from Valparaiso, Chili, from January 1 to September 1, 1853, appear to have been prepared by yourself; and I take pleasure in adding that these, as well as the returns subsequently received from you, were entirely satisfactory.

JOHN LENTHALL,
Chief of the Bureau.

Lieut. JAS. D. JOHNSTON,
U. S. Navy, Washington city, D. C.

NAVY DEPARTMENT,
4th Auditor's Office, January 3, 1857.

I hereby certify that the pay rolls, accounts current, and the correspondence, and the majority of the vouchers connected with the duties of naval storekeeper and purser at Valparaiso, Chili, from the 1st of October, 1852, to the 1st of September, 1853, were forwarded to this office with regularity and punctuality; and that they were, for the most part, in the handwriting of Lieutenant James D. Johnston.

A. O. DAYTON, *4th Auditor.*

IN THE SENATE OF THE UNITED STATES.

JANUARY 9, 1857.—Ordered to be printed.

Mr. BROWN made the following

REPORT.

[To accompany Joint Resolution, H. R. 23.]

The Committee on the District of Columbia, to whom was referred the Joint Resolution No 23, from the House of Representatives, in favor of J. W. Nye, report:

That having compared the statement of facts in the House report with the testimony in the case and finding them sustained, and agreeing with the House Committee in its conclusions, the Senate Committee adopts and makes that report their own, (House Report No. 217.)

IN THE HOUSE OF REPRESENTATIVES, July 19, 1856,

Mr. TRAFTON, from the Committee for the District of Columbia, made the following report.

The committee beg leave to submit the following report in regard to Nye's claim for improving a lot of public ground:

That by an act approved 5th July, 1812, (Statutes at Large, 1st session 12th Congress, page 775,) the President of the United States was authorized to lease any of the public grounds in the city of Washington, for a term not exceeding ten years, on such terms and conditions as in his judgment would best effect their improvement for public purposes.

By an act of Congress the Tiber creek was, in 1833, changed from its original bed between the avenue and the canal, to where it now flows, leaving the old bed of said creek an open, offensive channel; and this lot of ground, in which was this channel, was the receptacle of the filth and rubbish of that part of the city, rendering it a public nuisance. This lot was bounded on the north by Pennsylvania avenue, east by the creek where it now flows, on the south by the canal, and on the west by Third street.

In 1843 J. W. Nye proposed to the President of the United States that, if the President would give him a lease of said ground for ten years, he would fill the old bed of Tiber creek, make a sewer to convey the water from the avenue to the creek, set out a row of shade-

trees along the avenue, and along Third street on the borders of said lot, and put the ground in as high a state of cultivation as the other grounds around the Capitol; and would enclose the ground with a board-fence, erect a carriage-house and stable near the canal and Missouri avenue, and put no other buildings of any description on said piece of ground. When the proposition was made to the President, he objected to giving a lease for *ten* years, on the ground that it was thought by many that Congress would direct the location of the Smithsonian Institution on that lot. To obviate that objection, Nye consented to agree to relinquish said grounds should Congress see fit otherwise to dispose of them, and to remove his fence and stable from said ground whenever required by the government so to do, without any claim on government for said improvement. When remonstrated with for making this offer, Nye said he would as willingly take it with this condition as without it; having *no* fear, should Congress desire to appropriate it to any other purpose after he had made the improvements, that *any* member of Congress would consent that it should be taken from him without making him sufficient compensation for his expenditures; and that they would as willingly do it as though it had been so expressed in the lease. Major Noland, the Commissioner of Public Buildings, remonstrated with Nye for making this offer, telling him that it would cost at *least* five thousand dollars to make said improvements. But Nye thought, if it would cost the *government* five thousand dollars, that *he* could do it for *two* thousand dollars. He obtained a lease from President Tyler on the 29th day of April, 1843, on the aforesaid conditions. He planted the trees in November of the same year, agreeable to his contract. He was *three* years in making the improvements required by the lease, having expended over *twenty-nine hundred dollars* in making said improvements, besides putting nearly three hundred dollars' worth of manure on said ground, making an expenditure of about three thousand two hundred dollars, besides his own services, in making said improvements. The *fourth* year he raised a very large crop of corn and other vegetables on said lot, the ground having been put in a very high state of cultivation. The *fifth* year he had it put in a high state of preparation for a crop, but the Commissioner of Public Buildings (Mr. Charles Douglass) requested him to let the lot lie open long enough to enable him to have the creek, near the avenue, walled up; and when the Commissioner got the walling done, it was too late to raise anything on it that year. In the ensuing fall or winter this walling was washed away, and Congress having made an appropriation for walling the creek from the avenue to the canal, the Commissioner requested Nye to let the lot lie open in order to more conveniently make said improvements, promising Nye that he would get his lease extended as long as he was deprived of its use during both years, to which Nye consented. The Commissioner did not get the improvements made until winter; Nye was consequently deprived of its use that year also. During that Congress an appropriation was introduced in the Senate for enclosing the public grounds on the north, south, and west front of the Capitol. Nye called on one of the senators to know if it was intended to include the lot leased to him,

and was informed that it was not. After said appropriation was made, the Commissioner informed Nye that he was going to enclose the square between the Capitol and that occupied by Nye with a high paling fence, and requested him to remove his *board fence* and let the Commissioner extend his *paling fence* around both squares, at the same time assuring him that it was in no way to interfere with him in his occupancy of said lot until the expiration of his lease, to which Nye assented. After the Commissioner had enclosed said lot, he called on Nye to remove his carriage-house and give up the lot, which Nye refused to do, and sent a memorial to the Senate to ascertain if it was their intention to deprive him of his lease without compensation. The memorial was referred to the Committee on Public Buildings and Grounds, but not acted upon. This Commissioner being removed in a few days, and another appointed, Nye proceeded to sow the lot with oats; but, a short time before the oats were sufficiently ripe for cutting, the new Commissioner demanded of Nye the key of the gate, which he refused to surrender until the expiration of his lease. The next day he found the lock broken from the gate, and the oats mowed and raked up for fodder; and from that time Nye was refused the occupancy of the lot. And the use of said lot for *one year* only, after the improvements Nye made, is all the compensation he has ever received.

Without the authority of Congress, the Commissioner had no right to bar his *occupancy* of the grounds under the lease of the President of the United States.

The lease was given in good faith, and with the intent that it should run its full term if Nye fulfilled the conditions; and there is no evidence that he did not, to the letter. (Tyler's letter.)

The committee are therefore of the opinion that the said Nye should be remunerated for the heavy loss occasioned by taking from him the occupancy of said ground before the expiration of his lease, and report to the House the accompanying resolution, with the recommendation that it pass.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1857.—Submitted, and ordered to be printed.

Mr. JONES, of Iowa, from the Committee on Pensions, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Mrs. Eliza Henly, praying additional pension, with interest, beg leave to report:

That from a careful examination of the claim set forth in the application of the petitioner, they find that Mrs. Eliza Henly received a pension of \$94 63 per month, from May 3, 1835, to March 3, 1837, to which it appears she was entitled by virtue of an act of Congress passed March 3, 1835. On the 3d March, 1837, Congress repealed the law of 3d May, 1835, which reduced the pay of all officers in the navy of the United States to the amount of pay proper, as established in 1799, when post-captains were allowed one hundred dollars per month. To this amount the proper department did decide that the petitioner, Mrs. Henly, was entitled to, as directed by act of Congress passed March 3, 1817, "giving to the widow half the monthly pay her husband was entitled to during his life," which gave to Mrs. Henly \$50 per month, and which said amount she has received ever since, and is still receiving. Your committee are of opinion that Congress has ever been liberal in the extension of relief to the army and naval officers of the United States, therefore they recommend the adoption of the following resolution:

Resolved, That the prayer of Mrs. Eliza Henly be rejected.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1857.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany bill S. 504.]

The Committee on Foreign Relations, to whom was referred the memorial of Alexander I. Atocha, praying that his claims against Mexico, disallowed by the commissioners under the treaty of Guadalupe Hidalgo, may be investigated, and if found just paid by the United States, have patiently considered the subject, and now report :

That the memorialist was a citizen of the United States residing in Mexico, when, on the 26th of February, 1845, he received from that government an order "to leave the city of Mexico within the period of eight days for Vera Cruz, in order to depart from the republic."

It appears that the memorialist at the time protested, through Mr. Shannon, the American minister, against this order, as a violation of the treaty of April 5, 1831, between the United States and Mexico, and notifying the latter government that he would hold it responsible for the losses he might sustain by reason thereof.

Forced by this order to retire from the Mexican territory within the period of eight days, the memorialist alleges that he sustained great pecuniary loss ; and that he filed his claim specifying such loss, with the vouchers sustaining the same, before the board of commissioners appointed under the treaty of Guadalupe Hidalgo, which he alleges was unjustly rejected by that board, and he therefore petitions Congress for redress.

Believing that it would be dangerous to go behind the decision of the commissioners, unless it should appear that they had erred in the law applied to the case, your committee have examined with care the grounds assigned for an adverse decision in this case, and are satisfied that the commissioners erred in the law upon which they predicated their decision.

The commissioners assume, in their opinion, that the loss of the memorialist, by reason of his expulsion from Mexico, is established by the proofs filed by him, and decide against the validity of his claim exclusively upon the assumption that the order of expulsion was legal and proper, because, as they assume, of the complicity of the memorialist with Santa Anna in his resistance to the government *de facto* in their efforts to depose him as the president of the republic.

The commissioners assume that the connexion of the memorialist with the political movements of Santa Anna is established—first, by the fact that he remained there with Santa Anna until he was forced to abandon the government and leave the Mexican territory; and, secondly, because Mr. Shannon, the American minister, did not reply to a communication of the secretary for foreign affairs of Mexico, in which that officer, in acknowledging the receipt of the protest of the memorialist against the order of expulsion, says that Mr. Atocha “was one of the principal agents who wrought against the government, as is notorious, and as *his excellency Mr. Shannon himself well knows.*”

The error of the first of these assumptions of fact by the commissioners is now established by the certificate of the officer having charge of the archives of the Mexican government, which states that Mr. Atocha does not appear to have had any connexion with the movements of Santa Anna; and by the letter of Santa Anna himself, who, on the part of Mexico, made the treaty of Guadalupe Hidalgo, stating emphatically that Mr. Atocha never had any political connexion with him, and that he remained with him by his invitation, because “in those times of disorder and insubordination, he could not separate himself from him without imminent risk.”

The error of the second assumption of fact by the commissioners is established by the letter of our minister, Mr. Shannon, in which he expresses the conviction that the memorialist was not in any manner connected with the political movements of Santa Anna, and that he did not reply to the communication of the Mexican minister for foreign affairs, (not because he knew the correctness of his charge against Mr. Atocha,) but because the memorialist had left the country before the receipt of that communication, &c.

But for the purpose of the argument assume, contrary to the fact, that the commissioners were right in saying that Mr. Atocha was connected with the political movements of Santa Anna, will it follow that the government of Mexico was authorized to issue the order of expulsion against Atocha? The solution of this question will depend upon the construction of the treaty of 1831 between the United States and Mexico.

The 26th article of that treaty was intended to provide for the protection of the citizens of the two nations in the event of war between them, and the stipulation is: “That if war should break out between the two contracting parties, there should be allowed the term of six months to the merchants residing on the coast, and one year to those residing in the interior of the States and Territories of each other, respectively, to arrange their business, dispose of their effects, or transport them whersoever they may please, giving them a safe conduct to protect them to the port they may designate. Those citizens who may be established in the States and Territories aforesaid, exercising any other occupation or trade, shall be permitted to remain in the uninterrupted enjoyment of their liberty and property so long as they conduct themselves peaceably and do not commit any offence against the laws; and their goods and effects, of whatever class and condition they may be, shall not be subject to any embargo or sequestration

whatever, nor to any charge nor tax other than may be established upon similar goods and effects belonging to the citizens of the State in which they reside, respectively; nor shall the debts between individuals, nor moneys in the public funds, or in public or private banks, nor shares in companies be confiscated, embargoed, or detained."

During the late war with Mexico many citizens of the United States, who were residing as merchants in the territory of that republic at the time war was declared to exist between the two countries, were summarily expelled in disregard of this stipulation of the treaty of 1831, and most of the claims presented to and allowed by the board of commissioners, appointed under the treaty of 1848, were for damages consequent upon such violation of the treaty of 1831.

The 14th article of the treaty of 1831 was designed to secure to the citizens of the two republics, respectively, protection to their persons and property in time of peace; and, after stipulating for such protection, the two governments contract and agree "that the citizens of either party shall enjoy, *in every respect*, the same rights and privileges, either in prosecuting or *defending* their rights of person or of property, as the citizens of the country where the cause of action may be tried."

At the date of the order of expulsion of Mr. Atocha, Mexico and the United States were at peace with each other, and it necessarily follows, in the opinion of your committee, that for any offence with which he may have been charged, Mr. Atocha was entitled, under this article of the treaty, to be tried, and to have afforded to him all the means of a fair trial which are provided for in that article.

It seems to your committee to be also very clear that the Mexican government, under this treaty stipulation, possessed no other or greater power to punish a citizen of the United States domiciled within her territory than she possessed to punish one of her own citizens for a similar offence; and they are advised that the Mexican government did not possess, under the constitution and laws of that republic, the power to expel a Mexican citizen without trial for any offence. Indeed, the minister for foreign affairs who issued the order of expulsion against Mr. Atocha, in response to the letter of the American minister which had enclosed the protest of Mr. Atocha against the legality of the order, and his notice of intention to claim damages for the losses which it would occasion him, says, "that his government is authorized by the laws and constitution of the republic to expel from its limits *non-naturalized foreigners* pernicious to the country."

For the reasons assigned, your committee are of opinion that the expulsion of Mr. Atocha from the Mexican territory was a violation of the stipulations of the 14th article of the treaty of 1831, and consequently that he should have been awarded by the board of commissioners organized under the treaty of Guadalupe Hidalgo such damages as he could show were sustained by him in consequence of that expulsion.

Your committee are advised that of the three and one quarter millions of dollars stipulated by the fifteenth article of the treaty of Guadalupe Hidalgo, to be appropriated to the payment of claims of

citizens of the United States against Mexico, the sum of about a quarter of a million of dollars still remains in the treasury, and consequently to that extent the fund set apart for that purpose still exists to indemnify Mr. Atocha, if he can establish his claim by satisfactory proofs.

Your committee have not deemed it their duty to investigate the quantum of indemnity to which Mr. Atocha may be entitled. And, it being conceded that he was and is a citizen of the United States, they have confined themselves to the inquiry, whether his claim was intended to be provided for by the treaty of Guadalupe Hidalgo, and the affirmative of this question is, in their opinion, clearly demonstrated by the papers and proofs in the case.

Among the papers filed by Mr. Atocha your committee find the instructions of Santa Anna, then the president of the republic of Mexico, to the minister of his government, charged with the negotiation of the treaty, directing him to have the name of Mr. Atocha inserted in the treaty as one whose claim was to be paid under its provisions, and they find other and repeated recognitions of its justice as against Mexico, from the obligations of which that government claims to be released, solely because of the release by the United States, in that treaty, of all claims of its citizens against Mexico. We find that Mr. Almonte, the accredited minister of that republic to this government, was instructed to see that this claim, "the most just of any which had been presented," should be paid from the fund which Mexico had provided by the sale of a part of her territory for the liquidation of claims of citizens of the United States against her.

With the presentation of another view of this subject, your committee will close this report.

After the board of commissioners had closed their labors, many citizens of the United States whose claims had been rejected petitioned Congress to review the decision of that board, and the Senate of the United States appointed a special committee to sit during the recess of Congress, with power to send for persons and papers, and with instructions to examine each case and report such as, in their judgment, were entitled to relief.

That committee, in discharge of the duty assigned them, did investigate every claim which had been presented to the Senate for relief, and in every case, except this of Mr. Atocha, reported definitively. In his case no report was made because of an equal division of that committee upon his title to relief, so that this is the only case which has not received the supervision of the Senate, and it therefore appears to your committee, that for this reason, also, the memorialist is entitled to have his claim now investigated, and affirmatively decided upon by the government.

Your committee, in accordance with these views, have prepared, and submit herewith, a bill for the relief of the memorialist, which directs that his claim shall be investigated by the proper accounting officers of the treasury, and providing for the payment of such amount as shall be found due him; provided, that the amount so paid shall not exceed the balance of the fund provided by the treaty of Guadalupe Hidalgo which remains unapplied to the objects of that treaty.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1857.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Joint Resolution S. 43.]

The Committee on Pensions, to whom was referred the Joint Resolution (S. 43) for the relief of Mrs. Mary W. Thompson, would respectfully report:

That Lieutenant Colonel Alexander R. Thompson was killed on the 25th December, 1837, at the battle of Okeechobie, Florida. Under the act of March 16, 1802, she was pensioned at the rate of \$30 per month, from the date of his death, for five years, terminating on the 25th December, 1842. On the 26th February, 1853, she was again pensioned, to take effect on the 1st January, 1852, and to continue during widowhood. She now applies to Congress that she be allowed at the same rate, from the 25th December, 1842, when her original pension ceased, to the 1st of January, 1852, when the stipend allowed by the special act of February 26, 1853, commenced.

Your committee cannot resist the conviction that the policy of this government is correctly conducted in regard to the support of widows of deceased soldiers and officers of the army of the United States, by granting them a salary, or pension, sufficient for their continual expenses; therefore, they cannot consent to contribute the public funds for the support of that class of applicants during the pendency of such application to the proper department, or to Congress, and we recommend the following resolution:

Resolved, That in the opinion of your committee the joint resolution for the relief of Mrs. Mary W. Thompson be rejected.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1857.—Ordered to be printed.

Submitted by Mr. BIGLER.

VIEWS OF THE MINORITY

Of the Committee on the Post Office and Post Roads, to whom was referred the bill (S. 487,) "to provide for the transportation of the United States mails upon railroads."

The Committee on the Post Office and Post Roads, at its meeting yesterday, agreed to report to the Senate bill (S. No. 487,) "to provide for the transportation of the United States mails upon railroads, &c., in words as follows," to wit:

"That from, and immediately after, the passage of this act, it shall be the duty of the Postmaster General to enter into contracts with any individuals or companies who may propose to carry the United States mails upon any railroad now finished, in whole or in part, or hereafter to be constructed, not to exceed once daily each way, for the term of eight years, and that any individual or company so contracting and entering into bond and good security, to be approved by the Postmaster General and Secretary of the Treasury, shall be entitled, in full compensation for such service, to import, without the payment of any other duties, all the iron necessary to be used in the construction, repair, or relaying of such railroad during the continuance of such contract."

The undersigned, a member of that committee, feels constrained by a sense of duty to dissent from the report of the majority, recommending the proposed measure to the favorable consideration of the Senate, for the following reasons, which he asks to place on record, without any elaboration.

First, because in his opinion it is virtually a proposition to pay a premium to the railroad companies of the United States to consume railroad iron produced in other countries in preference to that made in our own.

Because it would be a species of that special legislation which seldom fails to complicate the machinery of government and work wrong to the people.

Because it proposes to infringe upon the general system of compensation for mail transportations, as also upon the uniform mode of collecting the revenue duties on imports from foreign countries, and to that extent produce confusion in the administration of both.

Because it proposes special legislation to advance the interests of railroad companies, to the manifest prejudice of those of the manufacturer of railroad iron.

Because it is designed to make the transportation of the mails the subject of special and peculiar if not impracticable contract, for a long term of years, when the whole experience in the Post Office Department is demonstrating the wisdom of that policy which throws the business open to the competition of all, except in very extraordinary cases.

Because it would authorize the Postmaster General to pay three or four times as much compensation to one railroad company as to another for the same service, and to require that officer, in addition, to make prospective contracts, to run eight years, for carrying the mails on railroads not in existence.

Because the manifest tendency of the measure would be to subject the government to impositions, if not to frauds, in the administration of its revenue and postal systems.

And finally, he cannot concur in the presentation of the bill to the Senate, for the reason that if passed its administration would devolve upon the Post Office and Treasury Departments, and neither, so far as his knowledge goes, has been consulted as to the expediency or practicability, &c., of the measure.

IN THE SENATE OF THE UNITED STATES.

JANUARY 15, 1857.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany bill S. No. 350.]

The Committee on Naval Affairs, to whom was re-committed Senate bill No. 350, "for the relief of Dr. Charles D. Maxwell, a surgeon in the United States navy," have had the same under consideration and report:

That on the 22d day of December, 1845, Charles D. Maxwell, a passed assistant surgeon in the United States navy, on board the United States ship Cyane, Captain William Mervine commanding, was required to perform not only his own duties but those also of surgeon of the ship, in consequence of the detachment from the ship of the surgeon. And the certificates of Captain Mervine and Commander Dupont, both in command of the ship at different times during the period of his extra service, show that he performed all the medical duties of the ship from the 22d of December, 1845, to the 23d of May, 1848; and one of them certifies that these duties were of the most arduous character.

The committee are satisfied that the petitioner did perform the duties of his own grade, and also those of the grade above him, or double duty, and that though his labors and responsibilities were thereby greatly increased, under existing laws he is restricted to the compensation of the subordinate grade.

Under similar circumstances, but with inferior claims to increased compensation, Congress, on the first day of August, 1854, passed "An act for the relief of Dr. S. R. Addison, passed assistant surgeon in the United States navy."—(*Statutes at Large*, vol. 10, p. 805.)

Your committee therefore think the petitioner equitably entitled to the difference between the pay of a passed assistant surgeon, which he has already received, and the pay of a surgeon; and they report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

JANUARY 16, 1857.—Submitted, and ordered to be printed.

Mr. SLIDELL made the following

REPORT.

The Committee on Foreign Relations, to whom was referred the memorial of the executors of General John Armstrong, deceased, of New York, late minister plenipotentiary of the United States at Paris, praying compensation for extra services performed by him during the continuance of his mission, have had the same under consideration, and now report:

That it appears from the memorial and accompanying papers that General Armstrong, then minister plenipotentiary of the United States at Paris, was, on the 17th March, 1806, appointed by his government commissioner extraordinary and plenipotentiary in conjunction with James Bowdoin, then minister plenipotentiary at Madrid, "to meet, confer, and treat" with the proper officers of the Spanish government, "of and concerning the territories of the United States, and of his Catholic Majesty, and also concerning all wrongful captures, condemnations, and other injuries for which the parties may be responsible the one to the other, or the one to the citizens or subjects of the other." That on the arrival at Paris of the Spanish envoy, said negotiations were commenced, and continued for some months, but no definite period is mentioned.

It further appears from the memorial that the board of commissioners appointed under the treaty with France of April 30, 1803, to examine into and adjust, in conjunction with the French bureaux, claims of American citizens against France, for illegal captures of ships and cargoes, having failed to complete that duty within one year from the date of the ratification of the treaty, (the period limited therein,) General Armstrong gave his time and attention to the investigation of the claims remaining unacted upon by the commissioners.

On the 7th December, 1821, General Armstrong addressed a letter to the Secretary of State, setting forth the grounds upon which he based his claim for additional compensation. That letter was referred by the Secretary to President Monroe for his decision. On the 10th April, 1823, President Monroe declines deciding the case, for reasons stated by him at length; the substance of which is, that the claim for compensation as commissioner, &c., to negotiate with Spain, involved, to some extent, the same principles of a claim in which he

was himself personally interested, and therefore he could not act in the case; and further, that the compensation claimed for perfecting the uncompleted work of the commissioners under the treaty of April 30, 1803, should properly be referred to the legislative department of the government, which alone had authority to decide it.

From that time to the presentation of this memorial, this claim seems to have rested without any attempt, so far as the committee are advised, to reassert it.

In considering the first branch of this claim, the committee find that President Monroe, in stating his reasons for declining to decide it, refers to an "analysis of all the claims which had been presented and allowed or rejected since the foundation of the government," prepared by him some time previously. From a careful examination of the precedents collated in that analysis, and others which have subsequently occurred, the committee have been able to find in no one of them the recognition of a principle broad enough to cover the present claim. The allowance of extra compensation to diplomatic agents of the government seems to have been based, in every instance, upon the additional expenses necessarily incurred in the performance of the extra duties imposed.

In this case the committee can perceive no such necessity for additional expense. General Armstrong remained at Paris—the court to which he was regularly accredited. All of his negotiations with the Spanish envoy were carried on in that city, and, for aught that appears to the contrary, those very negotiations may have been regarded as a legitimate part of his duty as minister to France; a supposition strengthened by the fact that Paris was selected as the place of such negotiation, with a view to obtaining the aid of the French government in effectuating its objects.

It is also worthy of remark, that Mr. Bowdoin, minister of the United States at Madrid, and colleague of General Armstrong in this special negotiation, does not appear to have asserted any claim for his extra services in that regard, notwithstanding his attention to the business might have involved the additional expenses incident to a trip from Madrid to Paris. But whether Mr. Bowdoin made such trip or not, his right to additional compensation would seem to stand upon a ground quite as high as that of General Armstrong.

In that day, during the comparative infancy of our republic, it frequently happened that ministers of the United States, accredited to different European courts, were associated together in the performance of special services; and yet it does not appear that extra compensation was allowed for such service in any case in which increased expenses had not been incurred by the minister.

In reference to the second branch of this claim, the Secretary of State, in a letter dated December 30, 1856, in reply to one of inquiry addressed to him by the committee, says: "In regard to that clause of the petition which relates to the alleged services of General Armstrong, with reference to the claims of citizens of the United States on France, I have to remark that there is no instruction to him on record in this department authorizing or directing him to perform those services; consequently it is not competent for me to say whether

or not, if they were performed as alleged, they were deemed to be within his province as diplomatic agent of the United States or otherwise. It is at least difficult to understand what the nature or extent of those services could have been subsequently to the year assigned for the duration of the commission on the subject of the claims, when the 11th article of the treaty of the 30th of April, 1803, declares that every necessary decision shall be made in the course of a year, to commence from the exchange of ratifications, and no reclamation shall be admitted afterwards."

From this statement it seems to be very clear that General Armstrong, in undertaking, as he alleged, to complete the unfinished business of the commissioners under the treaty of April 30, 1803, not only acted without instruction or direction from his government at home, but also in violation of the stipulations of the treaty itself.

The permanent interests of any government are best promoted by confining its active agents within the limits of prescribed duty. This principle is especially true in its application to a government like ours, founded upon a constitution and laws, in which the powers and duties not only of its principal departments, but of each subordinate agent in those departments, are particularly defined. To compensate a public officer, therefore, whether occupying a high or low station, for the performance of acts not only without the line of his duty, but in derogation of the authority under which he acted, would naturally tend to encourage a spirit of insubordination in the public service, and might lead to serious inconvenience, if not positive mischief, in its results; and when applied to such as are invested with diplomatic functions in foreign countries, remote from the supervision of the government at home, the dangerous tendency of such a policy becomes the more clearly manifest.

Other cases have occurred, heretofore referred to this committee, in which official agents of the United States in foreign countries have assumed powers and performed acts not only unauthorized by, but against the positive instructions of, the government at home, and afterwards claimed at the hands of Congress extra compensation therefor; and should the second branch of the claim of General Armstrong be now sustained, it would, in the opinion of the committee, encourage, on the part of public functionaries abroad, a disregard of all limitation upon their own powers and authority, and greatly multiply the number of applications similar to the one now under consideration and those above referred to.

For these reasons, thus briefly presented, the committee are satisfied that on neither branch of the case are the memorialists entitled to relief, and they recommend that the claim be rejected.

IN THE SENATE OF THE UNITED STATES.

JANUARY 16, 1857.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany bill S. No. 507.]

The Committee of Claims, to whom was referred the petition of George A. O'Brien, report :

The petitioner alleges that during the year 1845, and a portion of 1846, he was clerk for the Chickasaw Indians, by virtue of a treaty stipulation and an appointment authorized by the President, at a salary of \$600 per annum, payable out of the "Chickasaw fund." He was located for the performance of these duties in the Second Auditor's office. About one-third of his time was occupied by the Chickasaw business. The clerical force of the Second Auditor being insufficient at the time to keep up the business, Mr. O'Brien was directed to devote that portion of his time not required by the Chickasaw business to the examination and adjustment of accounts in the Auditor's office. He says he was constrained to submit to this requirement of the Auditor, or be deprived of his Chickasaw clerkship.

For this service in the Auditor's office, to which he says he devoted two-thirds of his time, he claims two-thirds the rate of pay then allowed to temporary clerks on similar duty—to wit, \$2 66 per day, for 206 days, amounting to \$549 38.

It appears from the "act for the relief of Sayles, J. Bowen," (9 Stat., 810,) that the successor of Mr. O'Brien has been paid for like services.

Mr. Polk, who was the chief clerk in the Second Auditor's office at the time, deposes to the truth of the facts stated in the petition.

Under these circumstances, the committee report a bill for the payment of the account.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1857.—Ordered to be printed.

Mr. FESSENDON made the following

REPORT.

[To accompany bill S. No. 508.]

The Committee of Claims, to whom was referred the petition of William Nason and others, legal representatives of John Lord, deceased, report :

This claim is founded upon the allegation that John Lord served his country during the war of the revolution, as a seaman on board the United States ship-of-war "Ranger," from April or May, 1779, to May, 1780, when she was taken at the surrender of Charleston, and that he was detained on board a guardship some time afterwards, and finally liberated about the last of July—making in all fifteen months. James Gooch deposes, that he was purser and clerk of said vessel during the time mentioned ; thinks Lord was aboard ; that no pay-roll was made out and no payments made to the men.

Joseph Wardwell, a shipmate of Mr. Lord, also testifies to the truth of the facts alleged.

In the original petition of Mr. Lord, for the payment of this claim, which was presented to the 20th Congress, he assigns as the reasons why his claim was not sooner urged, that at the time of his discharge he did not know that any provision had been made by government for paying off the seamen ; nor until 1798, when, on his return from a foreign voyage, he was informed by Captain Wardwell, (whose affidavit is in the case,) that he and other rangers had been paid. He then applied to an agent to assist him in procuring his pay, but without success, and that it still remains unpaid.

It appears from statements of the Secretaries, that there are no records of the "*Ranger*" in either the Treasury, War, or Navy Departments.

The case has been twice favorably reported in the House of Representatives, and once a bill passed for its payment ; but it being near the close of the Congress, the bill does not appear to have received any action in the Senate. No adverse report upon it appears to have ever been made.

The committee are of opinion that the evidence before them sustains the claim, and they report a bill for its payment.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1857.—Ordered to be printed.

Mr. Foot made the following

REPORT.

[To accompany Joint Resolution S. 30.]

The Committee on Public Lands, to whom was referred the Joint Resolution, (S. 30,) concerning Wolf island, report:

That having had the same under consideration, they report it back without amendment, and recommend its passage. The facts before the committee pertaining to this case are contained in the memorial of the occupant and owners of the lands on Wolf island; the proceedings of the legislature of Kentucky in respect to said island; the evidence on the part of the memorialists embraced in the affidavits of sundry persons; and the evidence on the part of the government contained in the letters of Commissioners of the General Land Office, of the surveyor general; the statements of sundry persons in response, and the report of the surveyor general of the 18th December, 1843; all of which are hereunto appended and made part of this report.

Memorial of the occupants and owners of the lands on Wolf island.

The undersigned, occupants of and owners of land located upon an island in the Mississippi river, known as No. 5 or Wolf island, would beg leave to present to the Congress of the United States a respectful memorial upon the subject of the recent action of the Commissioner of the General Land Office, ordering certain of the lands on that island to be brought into market as the lands of the general government.

Your memorialists would state that every foot of the land upon this island is held by parties claiming title thereto by grants from the commonwealth of Kentucky, and have been so held since the year 1836; that the dwellers upon the island have uniformly claimed to be citizens of the State of Kentucky, acknowledged in all respects the jurisdiction of that State, contributed to the support of that government, and looked to it alone for law and for protection. To decide, then, that these lands were the property of the general government, and this people citizens of the State of Missouri, without extending to the

parties most interested an opportunity to be heard, was, under the circumstances, to say the least of it, premature and, we think, unjust, for these facts were of too much notoriety not to be known in the department of the General Land Office.

Your memorialists hope that this course will not be sanctioned by Congress.

Your memorialists would state that this island embraces only eight square miles of territory, and the quantity of land proposed to be sold, as appears by a copy of the advertisement which accompanies this memorial, does not exceed three thousand acres. While this quantity of land is of no consequence to, and its sale is by no means required by the necessities of the general government, on the other hand it is of immense importance to your memorialists that it should not be sold. To some of them it is the only home they have—a home secured to themselves and families by a life of toil—where they have lived in peace and happiness with the laws of their favorite State extended over them, and here they fondly hoped to be permitted to die without bitterness or strife or litigation.

Your memorialists state that from the time of the first assertion by Kentucky of her jurisdiction and right over the island that claim has been continuously asserted without interruption or disturbance, and in the meanwhile the sister State of Missouri has, so far as any action on the part of the government is known to your memorialists, acquiesced in the title of Kentucky, and declined to assert any opposing claim or jurisdiction. And the general government on her part having withdrawn the lands from market upon the assertion of the right of Kentucky, permitted the matter to rest in that form until the period of the recent action of the Commissioner.

Under these circumstances parties who first acquired title under the Kentucky grant have reposed in security for twenty years. Farms have been opened, houses built, valuable improvements made, parties have died, leaving these lands to descend to their children, and the courts of Kentucky have adjusted their rights. Other lands have been conveyed and passed from hand to hand in full security of a perfect title, and the courts of Kentucky contain the record of these transfers.

Your memorialists would also beg leave to say that a sale of these lands now would disturb this quiet and repose of years, and serve to put into the hands of the litigious a weapon with which to commence a legal strife with the present occupants and owners of the island, and they have been taught by the laws of their own State that it is regarded both unjust and unwise to permit a sale of an outstanding title to land held in adverse possession by another.

Such adverse possession we claim to have; not acquired by illegal entry upon government land or by other wrongful act, but under the protection of the broad seal of Kentucky.

We would, therefore, respectfully ask that such action be had by Congress as will result in the peace and security of the citizen, relinquishing to the present owners all title that may be claimed by the national government, or such other relief as in the wisdom of Congress may be deemed just and proper under the circumstances,

leaving the two States to settle the question of jurisdiction between themselves.

E. J. Bullock
J. C. Burgess
Price Edrington
John F. Jones
Isham Bridges
Thomas L. Stanley
N. M. Kerr

Wm. J. Edrington
U. J. Stafford
Trice Pircall
John Stone
Caleb S. Jones
T. B. Whylie
E. Thomas.

COMMONWEALTH OF KENTUCKY.

IN THE HOUSE OF REPRESENTATIVES, *February 9, 1856.*

Mr. Marshall, from the committee on federal relations, made the following report, which was unanimously adopted, viz :

The committee on federal relations, to which was referred the message of the governor and the accompanying document from the Commissioner of the General Land Office, relating to the claim of the United States to Island No. 5, known as Wolf island, in the Mississippi river, respectfully report—

That from the most reliable sources of information to which the committee have had access, the State of Kentucky has always claimed the island known as Wolf island to be within its jurisdiction. It lies opposite to, and is a part of, Hickman county. The inhabitants residing thereon have, for more than thirty years, exercised all the rights and privileges of citizens of this commonwealth, and have been subject to the same burdens. The member who represented Hickman county at the session of 1851-'52, resided on Wolf island. On the 29th of January, 1836, the general assembly passed an act to protect the actual and *bona fide* settlers on islands in the Mississippi river, "within the jurisdiction of this commonwealth." On the 15th of February, 1837, an act was passed appointing the treasurers of the board of internal improvement residing in the counties of Hickman and McCracken commissioners, "with full powers to grant, sell, and dispose of all the islands in the Mississippi river which belong to this State, which are generally known as islands Nos. 1, 2, 3, 4, 5, (or Wolf island,) and 8, and also Cash island, in the Ohio river."

The committee have been informed that the lands embracing those islands were accordingly sold, and the purchasers, or those claiming under them, have ever since listed the same for taxation and paid taxes thereon ; that the State of Missouri, through its officers, has never attempted to exercise any jurisdiction whatever over either Wolf island or any other island in the Mississippi river, opposite to this State.

The country on the north side of the Mississippi river, opposite to those islands, and forming a part of the State of Missouri, was not embraced in the original boundaries of the United States, as agreed

upon in the definitive treaty of peace between the United States and Great Britain, concluded at Paris on the 3d of September, 1783, but composed a part of Louisiana, which was purchased by the United States from France, in 1803. By referring to the treaty of 1783, and the act of Congress authorizing the people of the Territory of Missouri to form a State government, the middle of the river Mississippi is recognized as the boundary line. When (says Chief Justice Marshall in *Handley's lessee vs. Anthony*, 5 Wheaton, 374) a great river is the boundary between two nations or States, if the original property is in neither, and there be no convention respecting it, each holds to the middle of the stream.

The Commissioner of the General Land Office assumes that the quantity of water on the east side is much greater than that on the west side of Wolf island, and consequently it is within the limits of the State of Missouri. The committee have no means of testing the accuracy of this assumption. If any evidence of the kind has been transmitted to the General Land Office, it was taken *ex parte*. They have been informed that many years since the navigators passed on the west or Missouri side of the island. If that be so, the committee suppose that the title of this State would not be lost by a change of the channel in the river.

The committee deem it of vital importance to this State that no sale of the land embracing Wolf island, under the authority of the United States, be made, until the question of boundary between Missouri and Kentucky is settled. They submit for the consideration of the House the following resolutions:

1. *Resolved by the general assembly of the Commonwealth of Kentucky*, That the senators and representatives in Congress from this State be requested to procure the passage of an act of Congress relinquishing all claim the United States may have to the island in the Mississippi river opposite to the county of Hickman, in the State of Kentucky, known as Wolf island.

2. If the passage of such an act cannot be obtained, to apply to the proper officer at Washington to suspend the contemplated sale of Wolf island, in May next, until the question of boundary between this State and Missouri is definitively settled, in order to ascertain which of said States has the right of jurisdiction over said island.

3. That the governor be requested to transmit to each of the senators and representatives in Congress from this State a copy of the foregoing report and resolutions.

Be it further resolved, That for the purpose of having a definitive settlement of the boundary between this State and the State of Missouri, the governor be requested to take the necessary steps to effect that object, either by a reference to disinterested and discreet persons, not exceeding three in number, neither of whom to be citizens of a State that borders on the river Mississippi, or by a suit in equity in the proper tribunal. And to defray the expenses incident to such proceeding, the governor is authorized to receive from the treasury the necessary sums, not exceeding, however, in the aggregate, fifteen hundred dollars.

IN THE SENATE, *March 3, 1836.*

Mr. CONKLIN, from the committee on federal relations, made the following report which was concurred in, viz:

The Committee on Federal Relations, to which was referred the report and resolutions from the House of Representatives relative to the alleged claim of the United States to Wolf island, concur in the report and resolutions, and would respectfully submit the following as a supplement to the report:

They find, from the response of Andrew McKinley, register of the land office of Kentucky, to a resolution of the Senate, adopted 14th instant, that Virginia, as early as the year 1782, prior to the definitive treaty with Great Britain, claimed Wolf island as part of her soil. That on the 25th February, 1782, Jacob Myers and William Shannon, as tenants in common, entered 5,000 acres of land on Wolf island, upon Virginia treasury warrants—the register's response is filed herewith.

The committee is informed that some thirty odd years ago one Joseph Edrington settled on Wolf island upon said entry, claiming under Jacob Myers.

They are also informed, that at the time of the early settlement of the country the navigation and main body of the waters of the Mississippi river at Wolf island was on the west or Missouri side, leaving the island within the boundary of Kentucky. If that be true, (and the settlement and continued occupancy of the island by persons who have exercised all the rights and privileges under, and been governed by, the laws of Kentucky, is persuasive argument of the fact,) the committee would say that no freak of the Mississippi river, in changing the volume of its waters from one to the other side of the island, could have the effect of making those persons living upon it residents of the State of Kentucky at one time and of Missouri at another.

LAND OFFICE OF KENTUCKY, *February 19, 1856.*

I find the following entry of record in this office, and as it relates to the claim of Virginia to Wolf island prior to the treaty of 1783, I think it my duty, in compliance with a resolution of the Senate of the 14th inst., to transmit a copy to you, to be laid before the Senate.

"*February 25, 1782.*—Jacob Myers and William Shannon, as tenants in common, enter 5,000 acres of land upon five treasury warrants: 3,000 acres of said warrants issued in the said Myers' name, Nos. 7070, 7100, 7099, the balance as assignee of Clough Overton, and Nos. 8032, 8033, beginning at the lower end of the arable land, in the big island, nearly in the middle of the Mississippi river, opposite the Iron Banks, computed to be about eighteen miles below the

mouth of the Ohio, thence to extend up both sides of the island so as to include all the ground on the same fit for cultivation."

This entry has not been surveyed or carried into grant, nor has it been withdrawn.

ANDREW MCKINLEY, *R. L. O.*

HON. J. G. HARDY, *Speaker of the Senate.*

COMMONWEALTH OF KENTUCKY,
Office of Secretary of State, Frankfort, March 29, 1856.

In pursuance of the third of the above resolutions, I herewith transmit a true copy of reports and resolutions adopted by the general assembly of this State at its December session, A. D. 1855.


By order of the governor :

C. S. MOREHEAD.

MASON BROWN, *Secretary of State,*
By S. P. ATTICUS BIBB, *Assistant Secretary.*

Statement of William Riddick, given this the 2d day of April, 1856.

This affiant states that he is aged eighty years ; that as far back as the year 1809, and from that period to 1814, he was familiar with that stream around Wolf island ; that in 1808 he passed on the east side of the island, and found it very difficult to navigate on account of snags and sand bars, the river at that time being in good boating stage. The affiant further states, that old boatmen informed him that the Missouri chute was the safest and best chute. The affiant also states that he passed down the Mississippi river in 1814 ; that he passed on the west side of said island, and found it to be much deeper and safer than it was on the east side, when he passed down in 1809.

WILLIAM (^{his}  RIDDICK.
mark.

Sworn to and subscribed before me, R. George, a justice of the peace for Ballard county, Kentucky, this the 2d day of April, 1856.

R. GEORGE, *J. P.*

Statement of Samuel Wilson, given this the 2d day of April, 1856.

This affiant states that he is aged seventy years ; that as far back as the year 1807, he navigated the Mississippi river on a flatboat, and in the year 1815 he passed down the said river on a barge, and returned up said river on a barge ; all of which times he passed the

Missouri chute. The affiant states that in 1807, when he passed down said river, that he considered the west side of Wolf island, which is the Missouri chute, the main channel of the river, and the pilots of all the flatboats, so far as he saw, took that chute. The affiant further states, that when he passed down in 1807 the river was in good boating stage; that the Kentucky chute was then termed a cut-off, and not wider than the Cumberland river. The affiant states that he has been a citizen of Kentucky ever since the year 1804.

SAMUEL WILSON.

Sworn to and subscribed before me, R. George, a justice of the peace for Ballard county, Kentucky, this the 2d day of April, 1856.

R. GEORGE, J. P.

Statement of Captain Joseph Swager, of Louisville, Kentucky.

Joseph Swager, a citizen of the county of Jefferson, in the State of Kentucky, this day came personally before the undersigned, a justice of the peace for said county, and made the following statements, to wit: That he commenced navigating the Mississippi river in the year 1823, as master of a steamboat, and continued to up to 1847. That he had an accurate knowledge of the river from the mouth of the Ohio to New Orleans, part of the time in most years in extreme low water, when the channels of the Mississippi river had to be sounded and buoyed to enable a steamboat to descend or ascend the river in which Wolf island is situated, and always believed that the largest volume of water was on the Missouri side of Wolf island, as steamboats had to descend on that side of the island in extreme low water. I have had many old pilots, who uniformly agreed that the largest volume of water flowed on the Missouri side of this (Wolf) island, and in ordinary stages of the river steamboats navigate either side of this island, as their business may require. And further, that steamboats of the present time are of much less draught of water than formerly, owing to their different construction, and on this account are seldom compelled to go round on the Missouri side of Wolf island for the channel of the river.

JOSEPH SWAGER.

Subscribed and sworn to by Joseph Swager, before me, this first day of May, 1856.



SAMUEL MATLACK,
Justice of the Peace, Jefferson county.

Statement of Francis Thomas, given this the 2d day of April, 1856.

This affiant states that he is aged 72 years; that, as far back as the year 1800, he was engaged in navigating the Mississippi river, and

was for many years familiar with the channel of that stream around Wolf island. He says that he knows that when he commenced boating on the river, and several years thereafter, the main channel of the river was on the west or Missouri side of Wolf island; and this fact was not left as a matter of doubt or question, but was as well defined as the channel of the river at any other point on the Mississippi river from the mouth of the Ohio to New Orleans. The affiant further states that, in the year 1800, his attention was called to the Kentucky chute by being called on to help a man named Briggs, whose boat was fast on the head of the bar in the Kentucky chute, which was at that time very small, and ran close to the island. Although the river was very high, said boats had to be unlashd, the chute being too narrow to admit them to pass side and side. Affiant further states that at that time there was a cypress swamp having very large trees in it, where the channel of the river on the Kentucky chute runs at present.

FRANCIS THOMAS.

Sworn to and subscribed before me, a justice of the peace for Ballard county, Kentucky, this 2d day of April, 1855

R. GEORGE, J. P.

Statement of Captain John Shallcross, of Louisville, Kentucky.

John Shallcross, a citizen of the county of Jefferson, State of Kentucky, this day came personally before the undersigned, a justice of the peace for said county, and made the following statement, to wit:

That he commenced navigating the Mississippi river in the year 1817 by steamboats, and continued up to the year 1851 or 1852, and during said time he commanded sundry steamboats; and being nearly all of the aforesaid time engaged in the trade between Louisville, Kentucky, and New Orleans, Louisiana, he, of course, frequently passed Wolf island, situated about twenty-two miles below the mouth of the Ohio river, on the Mississippi river, and opposite to the Chalk Banks (so called) on said river, and in all stages of water. He further states, that about fifteen or sixteen years ago the main channel of the Mississippi river was between the said Wolf island and the Missouri shore, and, as well as he now recollects, it was the main channel when he first commenced steamboating; but being so much further round by the Missouri shore than by the Kentucky shore, was seldom used by steamers, unless compelled to be so used on account of business or low water, and, from the shallow water he has frequently found on the channel of the Kentucky side of the island, he has no doubt that the main channel was at such times on the Missouri side of said island, but finding enough water to get through on said Kentucky side of said island, for the causes above named, did not go round; and further, that the steamboats of the present time are of much less draught of water than formerly, owing to their different

construction ; and on this account, also, were seldom compelled to go round on the Missouri channel or side of said Wolf island.

JOHN SHALLCROSS.

Subscribed and sworn to by John Shallcross, before me, this 1st day of May, 1856.

SAMUEL MATLACK, *J. P., J. C.*

Statement of Reuben Dawson, of Louisville, Kentucky.

Reuben Dawson, a citizen of the county of Jefferson, in the State of Kentucky, this day came personally before the undersigned a justice of the peace for said county and made the following statement, to wit :

That he commenced navigating the Mississippi river in the year 1820, and continued so to do up to 1840, a period of twenty years; that he was employed on board a steamboat some portion of each year in that period. His employment for the largest portion of the time was that of an engineer, though he was four years of the time employed as master of a boat ; that he had an accurate knowledge of the river from the mouth of the Ohio to New Orleans, as the part of the rivers he steamboated upon was the Ohio and Mississippi rivers, from Louisville, in Kentucky, to New Orleans, on the Mississippi. That he was well acquainted with that part of the Mississippi river in which Wolf island is situated, and always believed that the main channel of the Mississippi river or the largest volume of water was on the Missouri side of said Wolf island ; that he believed this was so from the fact that he was well acquainted with, and has been with many of the oldest pilots on the river, who uniformly agreed, that on the Missouri side of this (Wolf island) the main channel ran, and from the fact of his having been a passenger on board the steamer Kentuckian in 1834, from the mouth of the Ohio to New Orleans, and the Kentuckian being well laden was compelled to take the Missouri side of this island. That he does not believe there is much difference in the channel on either side of this island in ordinary stages of the river, but when the Mississippi becomes very low then a reef runs clear across the channel to the foot of the island from the Kentucky shore, and this makes a considerable difference in favor of the channel on the Missouri side, the reef referred to increasing the volume of water on that (Missouri) side. That from improvements in the construction of boats propelled by steam from their first use to the present time, the draught of water such boats draw is much lessened, and obviates the necessity of their always seeking the deepest water now, as in former times. And further says not.

REUBEN DAWSON.

Subscribed and sworn to by Reuben Dawson, before me, this first day of May, 1856.

SAMUEL MATLACK, *J. P.*

John A. Holton's affidavit.

John A. Holton, a citizen of the county of Franklin, in the State of Kentucky, this day came personally before the undersigned, a justice of the peace for said county, and made the following statement, to wit: That he commenced navigating the Mississippi river in the year 1808. He began steamboating in 1817, and continued up to the year 1843. During the time which intervened between the years 1824 and 1836 he commanded the steamboats "George Washington" and "Henry Clay." He states that whilst he was running said boats he was compelled to pass Wolf island, on the west or Missouri side, in consequence of there not being sufficient water in the channel on the east or Kentucky side of said island, at low water. He states that he ascertained that there was not a sufficiency of water for said boats to pass on the east or Kentucky side of said island by sounding the channel, and believes that the main channel of the Mississippi river was, even previous to the date last mentioned, on the west or Missouri side of said island.

He further states, that about the year 1830 he attempted to pass up on the Kentucky side of said island with the steamboat "Henry Clay;" in making the attempt the boat grounded. He then got into the yawl of the boat, and sounded the channel on the Kentucky side the full length of the island, when he found it too shallow for said boat. He immediately started up on the west side, and found no difficulty in making the passage on the Missouri side of said island. And further the affiant saith not.

JOHN A. HOLTON.

FRANKLIN COUNTY, *sc.*

I, George W. Gwin, a justice of the peace in and for the county of Franklin, in the State of Kentucky, do certify that John A. Holton this day came personally before me and made oath that the statements set forth and contained in the foregoing affidavit are true as made, according to the best of his recollection and belief.

Given under my hand this 26th day of April, 1856.

GEORGE W. GWIN,
Justice of the Peace, Franklin County.

STATE OF KENTUCKY, *ss.*

I, Alexander H. Rennick, clerk of the Franklin county court, in State aforesaid, do certify that George W. Gwin, who has signed his name to the above certificate, was at the time of doing the same one of the commonwealth's justices of the peace in the said county, duly commissioned and qualified, and that his said signature is genuine.

In testimony whereof I have hereto set my name as clerk, and
[L. s.] affixed the seal of said county, this 26th day of April,
A. D. 1856.

A. H. RENNICK,
Clerk Franklin County Court, Kentucky.

STATE OF KENTUCKY, ss.

I, Reuben Brown, presiding judge of the Franklin county court, in the State aforesaid, do certify that Alexander H. Rennick, who has signed his signature to the above certificate was at the time of doing the same the clerk of the said court, duly elected and qualified, and that his signature is genuine.

In witness whereof I have hereto set my name as aforesaid, this
[L. s] 26th day of April, 1856.

Mr. Nelson, the presiding judge, is absent from the county, as I have been informed, and I could not get his signature to the above certificate.

A. H. RENNICK.

APRIL 26, 1856.

John W. Russell's affidavit.

John W. Russell, a citizen of the county of Franklin, in the State of Kentucky, this day came personally before the undersigned, a justice of the peace for said county, and made the following statement, to wit: That he followed steamboating on the Mississippi river for about the space of thirty-five years, commencing in the year 1817, continuing up to the year 1852. He acted on the boats a part of the time as engineer, a part of the time as pilot, and the remainder of the time as captain. He states that he was in the habit of going down the river in the fall of the year, when the Mississippi was very low, and engaged in the cotton trade. This was his practice for many years. During this period it was generally understood by all the old river men, pilots, &c., that the deepest water was on the Missouri side, or west of Wolf island No. 5, on the Mississippi river. He states that he recollects particularly that in the year 1830, when the Mississippi was said to be lower than it ever had been before, as stated by the oldest river men, he was commander of the steamboat "Uncle Sam," and started down on said boat, in the fall of the year, from the mouth of the Ohio river, to engage in the cotton trade. When he reached Wolf island he attempted to pass down on the east or Kentucky side of said island. In making the attempt to pass on that side of the island he found the channel too shallow, being only five feet deep, whilst the boat was drawing six feet water. After working two days in an endeavor to pass down on the east side, he was compelled to haul said boat back and pass down on the west or

Missouri side, where he found either six and a half or seven and a half feet water, sufficient to take the boat through. The channel was very full of logs.

He states that he was always impressed with the belief that the deepest water was on the Missouri side of Wolf island until the sinking of the *Lady of the Lake*, when he understood that the sinking of said boat rendered the passage of the channel on that side somewhat dangerous: the channel on the east or Kentucky side having washed out and become deeper; and frequently having business at the town of Columbus, he, after that time, almost always passed on the Kentucky side.

And further the deponent saith not.

JOHN W. RUSSELL.

STATE OF KENTUCKY, ss.

I, George W. Gwin, a justice of the peace in and for the county of Franklin, in the State of Kentucky, do certify that John W. Russell this day came personally before me and made oath that the statements set forth and contained in the foregoing affidavit are true as made, according to the best of his recollection and belief.

Given under my hand this 26th day of April, 1856.

GEORGE W. GWIN, *J. P. F. C.*

STATE OF KENTUCKY, ss.

I, Alexander H. Rennick, clerk of the Franklin county court, in the State aforesaid, do certify that George W. Gwin, who has signed his signature to the foregoing certificate, was at the time of doing the same one of the commonwealth justices of the peace in and for the county aforesaid, duly commissioned and qualified, and that his said signature is genuine.

In testimony whereof, I have hereunto set my name as clerk [L. s.] and affixed the seal of said court this 26th day of April, 1856.

A. H. RENNICK,
Clerk Franklin County Court, Kentucky.

FRANKLIN COUNTY, ss.

I, Reuben Brown, presiding judge of the Franklin county court, in the State aforesaid, do certify that Alexander H. Rennick, who has signed his name to the above certificate, was at the time of doing the same the clerk of the Franklin county court, duly elected and qualified, and that his signature thereto is genuine.

In witness whereof, I have hereto set my name as judge as aforesaid this 26th April, 1856.

APRIL 26, 1856.

SIR: Mr. Brown, the presiding judge is absent from the county, and I could not get his signature to the above certificate.

A. H. RENNICK.

Mr. NELSON.

GENERAL LAND OFFICE,
May 15, 1856.

SIR: As requested in your communication of the 9th instant, I have the honor to transmit enclosed a copy of the report of the surveyor general at St. Louis, of the 18th December, 1843, and the affidavits therewith enclosed on the subject of Wolf island; also, of the instructions of this office of the 5th of April, 1838, and 26th October, 1843, requiring said report.

I am, very respectfully, your obedient servant,
THOS. A. HENDRICKS,
Commissioner.

Hon. H. C. BURNETT,
House of Representatives.

GENERAL LAND OFFICE,
April 5, 1838.

SIR: I herewith enclose the copy of a letter received from the register and receiver at Jackson, Missouri, dated the 29th of November last, announcing the fact that Wolf island, in township 24 north, range 17 east, of that district, was offered for sale, on the 13th of the same month, under an act of the legislature of the State of Kentucky, and requesting instructions from this office.

I also herewith enclose, for your information, a copy of the opinion (No. 170) of the solicitor of this office on the subject, in which I concur, and have to request that you will, as early as convenient, if the information is not already in your office, cause the proper examinations to be made, with a view to ascertaining which of the two channels is the *main* channel, giving the breadth and flow of water of each, with the general course of the stream above and below; and whether there has been any variation of these particulars since 1783, or since the survey of the island was made in 1823, all which you will report to this office, together with a map, and such other information and facts having a bearing on the subject as are to be found on the files of your office. I have likewise to request that you will transmit therewith the plat of fractional township 24 north, of range 18 east, which embraces part of the island, and appears to be due to this office, but cannot be found on its files.

The register and receiver have this day been instructed to suspend the sales until further notice, and to afford you such facilities as may be in their power.

I am, very respectfully, your obedient servant,
JAMES WHITCOMB,
Commissioner.

TO SURVEYOR GENERAL,
St. Louis, Missouri.

GENERAL LAND OFFICE, *October 26, 1843.*

SIR: The register and receiver at Jackson, Missouri, advised this office on November 29, 1837, that "Wolf island," situated in the Mississippi river, in township 24, north of ranges 17 and 18 east, had been offered for sale on the 13th of that month, by the authorities of Kentucky, and under a law of the legislature of that State.

On the receipt of this information, an examination was instituted at this office, and a copy of the opinion of the solicitor, (No 70,) dated February 24, 1838, was transmitted on the 5th of April following, to your office, with directions to the surveyor general to cause examination to be made of the channels of the river, so as to ascertain which was the main channel. The register and receiver were at the same time directed to withhold the lands on Wolf island from sale or entry, and the patents for the tracts therein sold were suspended at this office.

On the 13th of November, 1838, you transmitted to this office a copy of the instructions to Joseph C. Brown, the deputy appointed to make the required examinations, for which service, it appears, he was paid \$278 on the 13th March, 1839.

Here the matter appears to have rested until the receipt of your communication of the 22d of August, accompanied by several plats, one of which embraced a portion of Wolf island, unaccompanied by any report on the subject.

The object of this letter is to call your particular attention to this matter, and to request that you will immediately report all the facts ascertained, of the examinations of the deputy, accompanied by an explanatory diagram, and such other evidence as may aid in determining the question, as to whether the main channel of the river is on the east or west side of Wolf island.

Very respectfully, your obedient servant,

THOS. H. BLAKE, *Commissioner.*

To SILAS REED, esq.,

Surveyor General at St. Louis, Missouri.

SURVEYOR'S OFFICE,

St. Louis, November 29, 1843.

SIR: Being informed that you are familiar with the location of Wolf island, below the mouth of the Ohio river, and were engaged in its survey for this office as far back as 1820, I have to request that you will inform me which side of said island you have always considered the main channel of the Mississippi to pass, and what was the apparent relative width of the right and left channel at the time you were engaged in the surveys of that neighborhood; and also what was the general opinion of the people in the vicinity of the

island, in regard to which side thereof the main channel ran at that period.

I am, very respectfully, sir, your obedient servant,
 SILAS REED,
Surveyor General.

JENIFER T. SPRIGG, Esq.,
Surveyor's Office, St. Louis, Missouri.

SURVEYOR'S OFFICE,
St. Louis, December 1, 1843.

SIR: In reply to your communication of the 29th ultimo, in relation to Wolf island, in township 24 north, ranges 17 and 18 east, of the 5th parallel meridian, I have to state, that the surveying of all the islands in the Mississippi river, belonging to the Missouri Territory, between the points of intersections of the lines between townships 22 and 23, and 29 and 30 north, was embraced in the contract of William H. Ashley and Lionel Brown, under date of the 17th of December, 1818. In the early part of the year 1820, (Mr. Brown being dead,) the unfinished part of the contract was transferred to me by Mr. Ashley, with the consent of Surveyor General Rector.

In the year 1821, (about the month of March,) whilst I was engaged in surveying under the said contract, being then on the Mississippi river, opposite the mouth of the Ohio, I heard that Wolf island had just been surveyed by a surveyor in the employment of the State of Kentucky, who seemed to have considered it as belonging to that State. This was a few days before I commenced my survey of the said island. I had not the least doubt but that the island was on the west side of the river channel of the Mississippi, for I had previously crossed the river immediately above, and in full view of, the heads of both channels, and had made up my mind that there was about double the quantity of water in the eastern that there was in the western channel. I, nevertheless, thought it my duty to make the necessary inquiries amongst the settlers in the vicinity. Those with whom I conversed on the subject were, as well as I recollect, unanimously of the opinion that the main channel was, at that time, on the Kentucky side. Where it was in the year 1783 could not be then ascertained, but I should suppose, from the shape and appearance of the river, that the river channel was at the same place, "beyond the memory of man," unless the eastern channel is what is well known in the west as a "cut-off." I had no hesitation in surveying the island in question as a part of the contract of Ashley and Brown.

Very respectfully, sir, your obedient servant,
 JENIFER T. SPRIGG.

SILAS REED, Esq.,
Surveyor of Public Lands in the States of Illinois and Missouri.

SURVEYOR'S OFFICE,
St. Louis, December 12, 1843.

SIR: In a short conversation held with you a few days since in relation to the main channel of the Mississippi, at Wolf island, below the mouth of the Ohio, I understood you to say you had been in the practice of navigating the Mississippi at that point since the year 1814; that boats usually passed down on the left side of the said island, and next to the Kentucky shore; but that during the very low water of one or two seasons the right channel, or that between the island and the Missouri shore, was found to contain the deepest water, and was, therefore, used by boatmen.

I will thank you to inform me, by letter, whether I understood you aright, and also what is your opinion as to which side of Wolf island the main channel really passes, or has been generally considered to pass since your first knowledge of the place, and whether the said channel has, probably, been liable to those changes which are common to the Mississippi river below the mouth of the Missouri.

I am, very respectfully, sir, your obedient servant,
SILAS REED,
Surveyor General.

Captain SHREEVE, near *St. Louis.*

ST. LOUIS COUNTY, MISSOURI,
December 16, 1843.

SIR: In reply to your communication dated 12th instant, relating to the main channel of the Mississippi river, at Wolf island, I have to state, that I have been familiar with the channels on either side of that island since 1814; and that the pass to the left along the Kentucky shore has been most commonly used by navigators, from its being the shortest route, but during the low water of several years I have been obliged to pass to the right of the island down the Missouri shore, where I found a sufficient depth of water when the channel to the left was impassable by large boats. I have always been of the opinion that the right hand channel between the island and the Missouri shore was the main channel of the river.

I have not observed any material change in the channel past that island during my knowledge of the river, nor do I believe that the channel is liable to any material changes at that place; the shores of the island are permanent on both sides; the main land on either those caving in more or less every year, and the bars on each side of the island extending themselves in width in a corresponding ratio.

I am, sir, very respectfully, &c.,

HENRY M. SHREEVE.

SILAS REED, Esq.,
Surveyor General, St. Louis.

STATE OF MISSOURI, }
 County of St. Louis, } ss.

Before me, Louis T. Labeaume, a justice of the peace in and for the county aforesaid, appeared Michael Marly, and being sworn, upon his oath says, that he is seventy years of age; that he has been a resident of St. Louis for fifty-seven years, and that he commenced navigating the Mississippi between this city and New Orleans at the age of seventeen, and continued thus engaged for about thirty-four years; that he was pilot of a keel boat during the whole time, except the two first trips; that he knows an island in the Mississippi, just below the Iron banks, which has always gone by the name of Wolf island, (l'Isle au Loup;) that he always passed said island in descending the river to the right, and upon its left in ascending, during which he considered it the main channel. The channel of the lower Mississippi is frequently changing, at one period running upon one side, and at another on the other side of the islands.

MICHAEL ^{His} ~~mark~~ MARLY.

Sworn to and subscribed before me this 9th day of December, 1843.
 LOUIS T. LABEAUME,
Justice of the Peace.

I certify that the above deponent is an old French inhabitant of the city of St. Louis, and is a man of veracity. I have known him for a number of years, say from ten to fifteen years.

Given under my hand this ninth day of December, 1843.
 LOUIS T. LABEAUME, *Justice.*

With regard to the main channel at the time of my survey, I had no doubt but that the main channel was that east of Wolf island; it was broader, deeper, and more rapid, and was that generally navigated by boats.

As to its condition in 1783, I could not learn anything directly, not finding any one who had known it so long; but judging from appearances, I should suppose it to have been the main channel in 1783.

JOSEPH C. BROWN.

DECEMBER 18, 1843.

This certificate is appended to the field notes of Mr. Brown's operations at Wolf island in November and December, 1838.

SURVEYOR'S OFFICE,
 Saint Louis, December 18, 1843.

SIR: In compliance with your letter of the 26th October last you will receive herewith the plat* of Wolf island, in fractional township

* Two plats which were included with the township plats transmitted on the 20th inst.
 Rep. Com. 311—2

24 north, ranges 17 and 18 east of the fifth principal meridian, which was surveyed in the month of November, 1838, by Joseph C. Brown, under instructions from this office of the 13th of that month, and in pursuance of the instructions of the Commissioner of the General Land Office of the 5th of April, 1838.

Why the plats and reports, as to the locality of the main channel of the river at that point, as far back as 1783, as asked for in the Commissioner's letter, were not made out and forwarded at that time I have no means of knowing.

Mr. Brown was required by the surveyor general to "report, as far as he could ascertain, whether there had been any variation in the main channel of the river, breadth and flow of water, and in the general course of the stream above and below since 1783, or since the survey of the island was made in 1823, (ought to be in 1821.)"

His notes, however, were silent on the subject of the main channel as it existed in 1783; and I was, therefore, under the necessity of looking about for such information as was found to be within my reach at this late day, and having a bearing upon the subject. To this end I addressed, on the 29th ult., a note (marked A of the enclosed papers) to Jenifer T. Sprigg, the chief clerk of this office, who was entrusted with the survey of the said island in 1821; to which he replied on the 1st instant, as may be seen by the copy of his letter.

I also procured the affidavit, on the 9th inst., of Michael Marly, an aged Frenchman, inhabitant of this city, who was engaged in the navigation of the Mississippi between this place and New Orleans from 1790 until 1824, a period of thirty-four years, as pilot of a keel-boat. A copy of his affidavit is herewith communicated.

On the 12th instant I addressed a letter to Captain Henry M. Shreve, of this city, whose reply of the 16th instant is also appended.

To-day, Mr. Joseph C. Brown, who surveyed the island in 1838, came into the office and appended a certificate to his notes, a copy of which is furnished.

You will perceive some discrepancy of opinion among these four witnesses as to which side of the island the main channel really passes, or did pass in former times.

The testimony of Mr. Sprigg has, perhaps, the most important bearing upon the question of the main channel as it probably existed in 1783, and really existed in 1821. He is a man of close observation and unquestioned veracity. His letter remarks, that he "had not the least doubt but that the island was on the west side of the main channel of the Mississippi;" that he "crossed the river immediately above and in full view of the heads of both channels, and had made up his mind that there was about double the quantity of water in the eastern that there was in the western channel; and that, after inquiring among the settlers in the vicinity, who were unanimously of the opinion that the main channel was on the Kentucky side." He supposes, from the shape and appearance of the river, that the main channel was at the same place *beyond the memory of man.*"

This view of the case is strengthened by the fact that the eastern

conveyed more than double the quantity of water found in the western channel in 1838, as ascertained by the operations of Mr. Brown ; and if you will compare the plat of the survey of 1821 with that of 1838, you will perceive that very little alteration of the two channels occurred between these periods, (seventeen years,) and that Mr. Sprigg was right in his opinion of the relative character of the channels in 1821.

Mr. Shreeve remarks that "he had not observed any material change in the channel past that island during his knowledge of the river, (since 1814 ;) that it is not liable to any material changes at that place ;" and that "the shores of the island are permanent on both sides."

Thus, if there had been little or no change in the channel at the island since 1814, a period of twenty-nine years, as appears very conclusively from the testimony afforded by Mr. Sprigg, Captain Shreeve, and Mr. Brown, all of whose opinions are entitled to great weight, then it may reasonably be inferred that there was no material change of the same during the thirty-one preceding years, viz: from 1783 to 1814.

Captain Shreeve admits that "the pass to the left, along the Kentucky shore, has been most commonly used by navigators;" but states that "during the low water of several years he has been obliged to pass to the right of the island, down the Missouri shore." Michael Marly also states that he always passed up and down the right channel, and that he considered it the main channel.

You will perceive, however, by reference to Mr. Brown's statement of the depth and flow of water in the two channels in 1838, that the extreme depth of the left channel is twenty-two feet, while that of the right is only twenty-two and a half feet.

Now, notwithstanding the left channel is deepest at one given point, it is, nevertheless, *double* the width of that of the right, and consequently the water therein, at a low stage of the river, spreads over a much broader surface, its velocity being thereby much impeded, and the deepening by the "*wearing out*" of any one place rendered less certain; while, on the other hand, the flow of water is greatly augmented in the right channel by its contraction into a much narrower space at a low stage, which causes it to wear out a deeper bed, and more readily admit the passage of boats than the broad and shallow channel.

It is a well known peculiarity of the Mississippi, below the mouth of the Missouri, that its sandy bed will "*wear out*" or deepen much more rapidly where the water is most *concentrated* at a low stage, than where it spreads over a broader, but, at points, equally deep channel ; and thus it is that the pilots of boats on the Mississippi and Missouri usually seek the narrowest channel at low water, if it is known to afford in *general* the same, or about the same depth, as the broader channel, whereby they avoid the danger of encountering sand bars, which more readily form, and frequently very suddenly, in the broader channel, in which the velocity of the water has been impeded by its very shallowness.

Added to this, there is a much smaller relative portion of the chan-

nel on the left bank, as shown by Mr. Brown's operations in 1838, which exhibits a close approximation to its maximum depth than of the right or narrow channel, much of which exhibits nearly a maximum depth.

Considered, then, in all its bearings, I have no doubt, in my own mind, that the *main* channel has, in reality, been on the left, or Kentucky shore ever since, and long antecedent to 1783.

I am, very respectfully, sir, your obedient servant,

SILAS REED,
Surveyor General.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1857.—Ordered to be printed.

Mr. GEYER made the following

REPORT.

[To accompany bill S. 510.]

The Committee of Claims, to whom was referred the memorial of Joseph C. G. Kennedy, report:

The census board was constituted by act of 3d March, 1849, with the power to appoint a secretary, but without fixing his compensation. (9 Stat. 402.) Mr. Kennedy was appointed secretary. The 20th section of the act of May 23, 1850, authorized the allowance to the secretary of the census board of a salary of \$3,000 per annum "during the period he has been in their employ."—(9 Stat. 432.) The 19th section of the same act provided for the appointment of a superintending clerk of the census, at a salary of \$2,500 per annum. This appointment was also conferred upon Mr. Kennedy, and accepted by him. But as the census board was not dissolved, and as he still continued to act as its secretary, he continued to claim the salary of \$3,000, which the Comptroller of the Treasury refused to allow, on the ground that the office of secretary of the census board was superseded by that of superintending clerk of the census.

In order to settle the question thus raised, the Secretary of the Interior addressed a communication to the census board, inquiring whether they regarded their labors as ended and their secretary discharged from his duties; to which the board responded that they did not consider the census board as dissolved or Mr. Kennedy, its secretary, discharged from duty. This correspondence occurred in September, 1851, and would seem to show that Mr. Kennedy was still performing the duties of secretary of the census board, for at least sixteen months after his entering upon the duties of superintending clerk, and according to usage was entitled to the higher salary applicable to either of the two offices which he filled.

But in consequence of the continued objection of the Comptroller, the Secretary of the Interior in March, 1852, addressed a note to the chairman of the Senate Committee on the Judiciary, suggesting the introduction of a clause into the supplementary census bill, then pending, fixing the salary for the performance of both duties at \$3,000.

With a view, it is presumed, of accomplishing the object desired by the Secretary, a clause was introduced into the supplementary bill

"that the twentieth section of the said act [of 23d May, 1850] be amended by striking out the words '*has been*' from the last line, and inserting the words '*may necessarily be*' in lieu thereof." It will be perceived that the effect of this amendment was to provide for the payment of the salary of \$3,000 to the secretary of the census board *during the time he may necessarily be in their employ, instead of during the time he has been in their employ*, as provided in the original act.

At the commencement of the next session of Congress, it was represented to the chairman of the Judiciary Committee of the Senate that the above amendment of the act of 1850 might enable the memorialist to claim and receive the two salaries of secretary of the census board and of superintending clerk, amounting to \$5,500 per annum. This led to the adoption of the joint resolution of 23d December, 1852, which had the effect not only to repeal the above amendment to the act of 1850, but to provide that the act should "be so construed that no allowance as compensation be made to any person for constructive or any other service rendered as secretary to the census board, after the first day of June, 1850."—(10 Stat., 260.)

In reference to this resolution Mr. Downs stated in the Senate, that Mr. Kennedy was "claiming nothing more than the salary of \$3,000, to which he is entitled, and to which he was entitled."—(Congressional Globe, vol. 24, part 3, p. 2226.) And Mr. Meade, of Va., in the House of Representatives, said: "As well as I can recollect, there was an error committed, by which the superintendent of the census might, by the strict letter of that bill, draw his pay both as clerk of the census board and superintendent of the census. When the Senate became aware of this mistake, they sent down to us this joint resolution for its correction. It gives the superintendent *the choice of being paid as clerk of the census board or superintendent of the census.*"

The construction given to the joint resolution by the accounting officers of the treasury is, that it limits the compensation of the memorialist for all the duties performed by him in either or both capacities, to \$2,500 per annum from the 1st of June, 1850; and as he had already been paid at the rate of \$3,000 per annum, up to the time of the passage of the joint resolution, (December, 1852,) he has been officially called upon to refund to the Treasury the \$500 per annum received over that sum. By the act of the 22d of April, 1854, after the memorialist had left the office, the salary was definitely fixed at \$3,000 a year.—(10 Stat., 276.)

In view of all the circumstances, the committee are of opinion that the sum ultimately fixed upon as a proper compensation for the duties of the office, namely, \$3,000 a year, is a reasonable one, and that the memorialist is fairly and equitably entitled to that rate of compensation; and they report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1857.—Submitted and ordered to be printed.

Mr. EVANS made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Colonel Ethan Allen, praying to be compensated on account of the services of their ancestor during the war of the Revolution, have considered the same, and submit the following report:

It appears from contemporaneous history, that after the battle of Lexington, in April, 1775, the project was conceived of capturing the ports of Ticonderoga and Crown Point, then in possession of a garrison of England's soldiers. The command of the expedition was entrusted by the government of Connecticut to Colonel Ethan Allen, who, with great gallantry and bravery, executed the enterprise, at the head of a party of the hardy sons of Vermont, where he then resided. This was in May, 1775. In the fall of the same year, being in Canada using his exertions to induce the Canadians to make common cause with the other colonies, he made an attempt to capture Montreal; but being disappointed in the co-operation which had been promised to him, he was overpowered and taken prisoner. He was kept a prisoner, and treated with great severity, from this time until the 6th of May, 1778, a period of two and a half years, when he was exchanged, and returned home. On the 14th of the same month the American Congress conferred on him a brevet commission of colonel, "in reward for his fortitude, firmness, and zeal in the cause of his country, manifested during the course of his long and cruel captivity, as well as on former occasions." Two days after this, viz: the 16th of May, 1778, the following resolution was adopted, to wit: "That Colonel Ethan Allen be entitled to all the benefits and privileges of a lieutenant colonel in the service of the United States during the time of his late captivity."

On the 24th of September, 1778, after reciting the foregoing resolutions, and that it had been represented to Congress that Colonel Allen's circumstances had been greatly reduced by his late long and cruel confinement, and his brevet commission did not entitle him to pay, it was resolved as follows: "That seventy-five dollars per month be allowed Colonel Allen from the date of his brevet, during the pleasure of Congress, or until he shall be called into actual service."

The petitioners claim that, as this resolution was never repealed, and as Colonel Allen was never after called into actual service, they are entitled to receive his pay to the time of his death, on the 12th day of February, 1789, amounting, as they say, to \$9,675.

The committee do not concur in these views of the petitioners. Colonel Allen received his pay under these resolutions from the time of his captivity up to the close of the war, and also his commutation of five years' full pay under the resolution of the 22d of March, 1783, as a colonel who had served to the end of the war. The seventy-five dollars a month was not intended as a pension for life, unless called into service, but to put him on the same footing as other colonels of the army, whose pay would cease, of course, when they were discharged.

The committee therefore recommend the adoption of the following:

Resolved, That the prayer of the petitioners be not granted.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1857.—Ordered to be printed.

Mr. EVANS made the following

REPORT.

[To accompany bill S. 512.]

The Committee on Revolutionary Claims, to whom was referred the petition of William L. Davidson, heir of General William Davidson, deceased, having had the same under consideration, report:

That the history of the military services of the father of the petitioner is fully set forth in Wheeler's History of North Carolina, and in the Journals of Congress from 1775 to 1781. He was a member of the Mecklenburgh convention, which, in May, 1775, made the first declaration of independence which emanated from the American people.

After the battle of Lexington, when it became manifest that the difficulties between the colonies and Great Britain were to be decided by the sword, the convention of North Carolina raised six battalions for the common defence, and tendered their services to Congress. Of the 4th battalion, William Polk was appointed colonel, James Thackston lieutenant colonel, and William Davidson major. These appointments were made by the Congress of the United colonies, on the recommendation of the convention of North Carolina, on the 7th of May, 1776. The North Carolina troops were marched to the north, under General Nash, to reinforce the army under the command of General Washington.

In this arduous service he remained until November, 1779, when the North Carolina troops were ordered to reinforce General Lincoln in South Carolina. In the meantime Major Davidson had been promoted to the rank of lieutenant colonel.

As the troops passed through North Carolina, he obtained leave of absence for a short time to visit his family, whom he had not seen since he left them to join the northern army. It is stated in the petition, and there is no reason to doubt the fact, that when his furlough expired, he immediately repaired to Charleston to join his regiment; but when he arrived in the neighborhood, he found the city so closely beleaguered that it was impossible for him to go in.

When Charleston capitulated, in May, 1780, his regiment were made prisoners of war, and he, being out of active employment, repaired to

Mechlenburgh, his native county, and raised a volunteer corps for the purpose of keeping in subjection the tories, who were numerous in that part of North Carolina and the adjoining parts of South Carolina. In this service he was actively engaged until after Gates' defeat in August, 1780. In this battle General Rutherford, who commanded the militia of the Salisbury division, was taken prisoner, and his command was conferred by the government of North Carolina upon Colonel Davidson, who thus became a brigadier of militia, retaining at the same time his rank in the continental army, ready to resume his command when his regiment should be exchanged or again recruited.

In January, 1781, whilst General Greene was retreating through North Carolina, pursued by a superior force of the enemy under Lord Cornwallis, it became of great importance to retard the march of the enemy as much as possible, and to enable the American general to cross the Yadkin before he could be overtaken. To this end Colonel Davidson, by the order of General Greene, posted his command, consisting of 300 militia, at Cowan's ford, on the Catawba river, which it was supposed was one of the passes by which the enemy would attempt to cross that river. This conjecture proved to be correct.

On the morning of the 1st of February, 1781, the enemy, in large force, appeared on the opposite side of the river. Their passage was resisted with great vigor and courage, and was effected at a heavy loss; but in the conflict the American commander was killed. In consideration of his gallant conduct, Congress, on the 20th day of September, 1781, passed a resolution requesting the governor and council of North Carolina to erect a monument, at the expense of the United States, not exceeding in value \$500, to the memory of the late General Davidson, who commanded the militia of the district of Salisbury, in the State of North Carolina, and was killed on the 17th of February, fighting gallantly for the defence of the liberty and independence of these States.

Under these circumstances, the petitioner claims for himself, and the other children of Colonel Davidson, the seven years' half-pay, to which they conceive themselves entitled under the resolution of Congress of the 24th of August, 1780, which is in these words: "*Resolved*, That the resolution of the 15th day of May, 1778, granting half-pay for seven years to the officers of the army who should continue in the service to the end of the war, be extended to the widows of those officers who have died, or shall hereafter die in the service, to commence from the time of such officer's death." A subsequent part of the same resolution gives the allowance to the orphan children of the deceased officer, in case there be no widow or she should afterwards marry. From the facts hereinbefore stated, there is no doubt that, in consequence of the death of General Davidson, his widow, if he left one, and if none, his children, who were then orphans, were entitled to the seven years' half-pay.

He was one of those who were entitled to the seven years' half-pay under the resolution of the 15th of May, 1778, and he was afterwards killed in battle, acting under the orders of Major General Greene. His command of the militia, and bearing the commission of a major

general of the militia, could not change the legality of the claim of his family, under the resolution of the 24th of August, 1780.

The committee, therefore, report a bill to pay to the petitioner, W. L. Davidson, for himself and the other children of his father, the half-pay of a lieutenant colonel of infantry for seven years. They are not orphans now, but they were at the death of their father. If they did not receive it then, they are entitled now. Such has been the uniform construction of the resolution, as appears from many acts passed within the last thirty years.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1857.—Ordered to be printed.

Mr. FISH made the following

REPORT.

[To accompany bill S. 573.]

The Committee on Foreign Relations, to whom was referred the memorial of Auton L. C. Portman, late clerk to Commodore M. C. Perry, while in command of the East India squadron, praying additional compensation for his services as Dutch interpreter during the negotiations with the Japanese authorities, have had the same under consideration, and now report :

That it appears from the memorial that Mr. Portman was the clerk of Commodore M. C. Perry, while in command of the East India squadron, and, during the negotiations with the Japanese authorities, acted as Dutch interpreter for the United States ; that owing to the refusal of the Japanese ministers to conduct the negotiations in the Chinese language, a large amount of interpreting and translating was thrown upon and discharged by the memorialist ; that the only compensation received by him for those delicate and responsible duties was the salary of five hundred dollars per annum, at which he was rated on the books of the ship ; and he therefore asks that such additional compensation shall be now allowed him as, together with that heretofore received, shall be proportionate to the importance of the services rendered.

The statements of the memorial are supported by the certificates of Commodore M. C. Perry, commanding, and Captains Henry H. Adams, Sidney S. Lee, and Franklin Buchanan, attached to the expedition.

From the report of Commodore Perry in relation to that expedition, it appears that the time employed in conducting his negotiations with the Japanese government embraced a period of a little less than one year, during which, it is reasonable to presume, the memorialist was required, in addition to his regular duties as clerk, also to perform those of interpreter.

In reply to a letter of inquiry, addressed by the committee to the Navy Department, the Secretary, under date of July 16, 1856, says : " Clerks in the naval service are appointed by officers entitled to them, with the sanction of the department. My impression has always been, that in selecting their secretaries and clerks, the commodores en-

deavored to secure such as could aid them in their correspondence by their attainments in different languages. I am not aware of any precedent for extra pay on account of translating or interpreting performed by their clerks."

Whilst the committee are disposed to concur with the Secretary of the Navy in the opinion here indicated, that for the ordinary translating and interpreting incident to their position clerks in the naval service should not be entitled to receive extra compensation, yet they cannot but regard the present case as resting upon entirely different grounds. Mr. Portman's duties as interpreter in the conduct and negotiation of a treaty between our government and that distant and secluded empire involved much and delicate responsibility. They were beyond and additional to his regular duties as clerk to the commodore, and for their performance he is, in the opinion of the committee, properly entitled to additional compensation.

In estimating the amount of additional compensation, the committee are of opinion that one thousand dollars would be just and reasonable. They therefore report a bill in his favor for that amount, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1857.—Ordered to be printed.

Mr. FISH made the following

REPORT.

[To accompany bill S. 514.]

The Committee on Foreign Relations, to whom was referred the memorial of John H. Wheeler, esq., late minister resident of the United States at Granada, praying the reimbursement of expenses incurred by him for the relief of American citizens in distress in that country, have had the same under consideration, and now report :

The memorial sets forth that a party of American citizens, while crossing the Isthmus, *en route* from California to New York, were attacked by the natives at Virgin Bay, on the lake of Nicaragua, on the 19th of October, 1855. Some of them were killed, others wounded and robbed. That another party of hostile natives, strongly armed, were at the same time collected at San Carlos, on the other side of the lake, who had also fired upon passengers going by that place. Thus hemmed in by hostile forces on each side of the lake, and cut off from the means of access to either ocean, they were compelled to resort to Granada, and apply to the memorialist, then minister resident of the United States at that place, for protection and such other relief as they required. That the memorialist promptly afforded them the protection and relief asked for, procured comfortable quarters, and supplied them, to the number of two hundred and fifty, with food for two days and nights. That during their stay at Granada two of their number died, and were buried, and on their departure three had to be left behind on account of their wounds.

These statements are fully supported by the affidavit of Dr. W. E. Rust, one of the said party, and also by that of Joseph N. Scott, general agent of the Accessory Transit Company across the isthmus, who adds, that the memorialist "freely gave his time, money, house, and clothes to his suffering countrymen, as some of them were robbed of everything by the enemy at Virgin Bay."

It further appears that the memorialist applied to the Department of State for the reimbursement of those expenses, to which application the Secretary replies, under date of February 5, 1856: "That this department has no fund from which it is authorized to reimburse such expenditures. Although inconvenience and hardship may be the result of this inability to replace the funds which our diplomatic

representatives often advance out of their private means for the relief of their distressed fellow-citizens in foreign countries, the department has no mode of relief at command, and can only suggest an application to Congress for such aid as the circumstances warrant."

The amount claimed by the memorialist is but five hundred dollars, which seems to be quite moderate, and barely adequate to cover the actual expenses incurred; and whilst the committee are unwilling to recommend the adoption of a policy that might encourage our representatives abroad in indiscriminate or wasteful application of charities, under the expectation of reimbursement by the government at home, yet the peculiar circumstances of this case are such as, in their judgment, to entitle the memorialist to the very small amount of relief asked for. They therefore report a bill in his favor, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1857.—Ordered to be printed.

Mr. EVANS made the following

REPORT.

[To accompany bill S. 517.]

The Committee on Revolutionary Claims, to whom was referred the petition of Elizabeth Montgomery, daughter of Captain Hugh Montgomery, praying relief, beg leave to report:

The memorial of the petitioner, which is very circumstantial in substance, presents these facts: She is the daughter of Captain Hugh Montgomery, formerly of Wilmington, in the State of Delaware, and employed as captain of the brig *Nancy*, of that port, belonging to himself and others. That in the latter part of the year 1775 the said brig, chartered by Robert Morris, then a member of Congress, was despatched to the West Indies with a cargo of flour to be sold, and the proceeds returned to the United States in gunpowder and munitions of war. The cargo was sold at Porto Rico, and the *Nancy* then proceeded to St. Croix, where she was privately loaded with her return cargo, consisting of 460 barrels of gunpowder, six long four-pounders, sundry chests of small-arms, and other munitions of war, and with sundry articles of merchandise belonging to the said Montgomery. After the reception of his cargo, by means of the cannon, and some swivels and other arms, Captain Montgomery converted his ship into a vessel of war, and sailed for the Delaware, in order that he might deliver his cargo at Philadelphia, according to his directions. When he approached the Delaware capes, he was intercepted by two British ships of war. He succeeded in beating off the boats sent to capture him; but finding it impossible to escape capture, he ran his ship into shoal water, and commenced removing the powder and munitions of war to the shore, and securing them from capture, leaving the private property to its fate. He kept off the enemy's boats whilst he landed 244 barrels of the powder, the cannon, small-arms, and other munitions of war, with the aid of Captain Weeks, who commanded some American vessels of war within the capes. When he had so far succeeded in saving the cargo, one of the enemy's vessels approached within three hundred yards, cast anchor, and opened a destructive fire, whilst several boats filled with men approached for the purpose of boarding the *Nancy*. Finding it impossible to save

more of the powder and the private property, he left the vessel, having laid a train and match communicating with the powder, preferring to destroy both his vessel and the rest of her cargo, rather than it should fall into the hands of the enemy. The boats' crews had scarcely taken possession of the vessel, when she was blown up, with all on board, and, with the remains of her cargo, was destroyed. That part of the cargo which had been saved was transported to Philadelphia, and safely delivered to the agents of the government. Subsequently to this, Captain Montgomery went to sea in a private armed ship, was captured by a British cruiser, imprisoned for a long time, and treated with great harshness on account of the destruction of so many British sailors, by blowing up his vessel, as before stated. During his long imprisonment his mind became disordered; and during his voyage homeward, after his release, he leaped overboard in a fit of insanity, and was drowned, leaving a widow, who has been long dead, and the petitioner, his only child, then a small girl.

The petitioner prays that Congress should make her some compensation for the losses of her father, sustained in the destruction of his vessel, as before stated, and for his patriotic conduct in saving the public property, then so much needed, to the neglect of his own, which he might have saved, instead of that which belonged to the public.

A claim is set up for the value of this private property, shipped on board the *Nancy* on his own account. But of this no satisfactory evidence has been given, and the committee have been unable to form any estimate of its value. As to the other part of the claim, the main facts are fully proved by an affidavit of Captain Mendenhall, who was one of the crew of the *Nancy*, and cognizant of all the facts of the voyage, and the safe landing of the greater part of the munitions of war. The blowing up the vessel and the saving of the gunpowder are stated in an original letter, filed with the evidence, from George Reed, one of the signers of the Declaration of Independence, to his wife, dated the 6th of July, 1776, a few days after the occurrence. And on the whole, the committee are of opinion that the facts hereinbefore set forth are satisfactorily proved.

If, as is alleged, the vessel was chartered for the purpose set forth, it is presumed no doubt could exist that the government ought to pay; the destruction being beneficial to it, and inevitable, under the circumstances, to prevent the vessel and her cargo from falling into the hands of the enemy. Many claims of this kind have been paid.

The great difficulty in allowing this claim is its antiquity; but in this case the delay is satisfactorily accounted for.

On a review of the whole case, the committee have come to the conclusion that the petitioner ought to be liberally remunerated, to the extent of any loss sustained in the destruction of the vessel by her father. But after such a length of time no evidence could be furnished of the value of the vessel. Any estimate would be conjectural; but as the claim is a just one, they have come to the conclusion to give her \$5,000, as a full and final satisfaction of her claim, and report a bill for that purpose.

IN THE SENATE OF THE UNITED STATES.

JANUARY 22, 1857.—Ordered to be printed.

Mr. BROWN made the following

REPORT.

[To accompany bill S. 518.]

The Committee on Indian Affairs, to whom were referred the petition and papers of John Shaw, have had the same under consideration, and report :

The petitioner, according to his own statement, made under oath, bought from the United States a tract of land, lying on the east bank of Fox river, in the State of Wisconsin, and soon thereafter, to wit: in 1846, settled on the same for the purpose of stock raising. In the pursuit of this design, he carried with him a large number of hogs, cattle and horses, and also a considerable quantity of provisions for the subsistence of himself and his hired hands. The neighboring (Menomonie) Indians were, as he alleges, in a starving condition, the wild rice and other sources of supply having almost entirely failed the year before. These Indians visited the premises of the petitioner and importuned him to supply their absolute wants. He refused on the ground that he was not a trader, and had no more provisions than were necessary for his own purposes. But the Indians continued their entreaties, and he yielded, by degrees, from time to time, until his store was entirely exhausted—the Indians all the time making the most solemn protestations that when they received their annuities from the government they would pay him. When the provisions were exhausted, the Indians demanded his hogs and cattle for food. These he refused to surrender on any terms, as he had taken them to the country at great expense and trouble to breed from. The Indians took them by force and stealth, justifying their lawless conduct on the ground of actual starvation and the impossibility of getting food in any other way. Other witnesses, whose affidavits are found among the papers, testify substantially to the same state of facts, and all agree that the Indians admitted in council that they got the provisions and took the stock, and justified their refusal to pay on the ground that their *per capita* annuity was so small they could spare nothing from it.

Under these circumstances, the petitioner appeals to Congress to indemnify him. The committee do not think the petitioner has any

claim against the United States; but if the facts be as he and his witnesses state them, he has a just demand against the Indians, which it is the duty of the government to assist him in collecting. The Indians are, as respects their annuities and tribal funds, the wards of the government; and while it is the duty of the government to protect them against the fraudulent purposes of white men, it is no less its duty to compel them to act honestly towards *bona fide* white creditors. If Shaw, the petitioner, had gone into the Indian country in violation of the intercourse act, he would have no claim to the protection of government; or if he had been a trader, though living on land bought of the government, his claim would be very feeble. If, however, as he alleges, and as your committee believe to be true, he was an actual settler on land bought from the United States, carrying on a lawful and laudable business, having no intercourse or connexion with the Indians, and these people bought or took from him by force or stealth provisions which were absolutely necessary for their subsistence, he has a claim upon them for payment, which it is the duty of the United States to enforce.

Your committee are aware that there has been, on the part of the petitioner, no literal compliance with the requirements of the 17th section of the act to regulate intercourse with the Indian tribes. This omission may be excused on the ground that petitioner relied on the good faith of the Indians, and trusted their repeated promises to pay him, and on the further ground that he was ignorant as to the requirements of the law. His claim is now barred by the three years' limitation fixed in the intercourse act. If the claim be such as he states it, and as your committee believe it to be, it will be a great hardship to deny him all relief; and to give him that relief now, to which he was at first entitled, can work no injury to the Indians.

While your committee say all this, they do not forget that they are reporting on an *ex parte* statement of the facts. The Indians have not yet been heard. It is right that they should be, before any portion of these funds are applied to the payment of this claim; and, therefore, in preparing the bill which accompanies this report, your committee have taken care that both sides shall be heard.

IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1857 —Ordered to be printed.

Mr. BIGLER, from the Committee on Commerce, made the following

REPORT.

[To accompany bill S. 470.]

The Committee on Commerce, to whom was referred the memorial of the Board of Trade of the city of Pittsburg, asking for an appropriation of public lands, to enable a company chartered or to be chartered, by the States bordering on the Ohio river, to improve its navigation; as also the bill offered by the senator from Ohio, (Mr. Pugh,) providing for an appropriation of \$50,000 to pay the expenses of topographical and hydrographical surveys on the tributaries of the Ohio, with a view to the improvement of its navigation, by means of a system of reservoirs, to retain the water when it is abundant and supply it to the channel of the river during the dry season, beg to report:

That they have given both propositions, as well as the general subject of improving the Ohio river, that measure of consideration which the great commercial and political interests involved seem to demand.

The existence of a constitutional right in Congress to appropriate the public funds for the improvement of the national highways of the country has been denied by many learned statesmen, whilst others, admitting the power, have questioned the policy of such use of it on the part of the government. The policy of restraining its use, if found to exist, to works of the highest utility and largest national consequence, in order to guard against the abuses to which any system of public expenditure, however legitimate, is so likely to lead, is, we believe, admitted by all; even by those who would advocate the broadest federal jurisdiction over the subject.

The committee having determined, however, to go no further than to recommend the adoption of the bill presented by the senator from Ohio, with amendments to give the proposed examination a wider range, the constitutional question does not necessarily arise, and need not be discussed or decided on this occasion. The practice of authorizing surveys and other scientific examinations for the purpose of solving difficult problems in theory or practice, with a view to the promotion of the general good, has been indulged in since the earliest days of the republic, and no serious objection has been made to such use of the public money. Should the proposed examination confirm the favorable impressions of the committee as to the expediency and practicability of the great enterprise to which they look, a proposition

to apply the federal funds to the accomplishment of the work will present the constitutional difficulty in its broadest view, and then each can decide for himself.

The main purpose of this report is to notice the object to be accomplished; its character and importance; its practicability and consequences; and to discuss, briefly, the various schemes for its attainment, which have, at different times, been presented for the consideration of the public.

First, then, as to the value of the navigation of the Ohio river as a channel of commerce, and the necessity for its improvement.

The State of Pennsylvania, about thirty years ago, commenced her system of public works for the ostensible and primary purpose of reaching the commerce of the Ohio river. The State of Maryland, backed by the federal government, shortly afterwards attempted to reach the same channel of trade through the still incomplete Chesapeake and Ohio Canal. The State of Virginia made an effort to gain the same object, by means of the James River and Kanawha improvement. The Baltimore and Ohio Railroad Company was organized with reference to the same object, and more recently the Pennsylvania railroad from Philadelphia to Pittsburg, and other similar works further north and south have been constructed, all seeking the same high prize. These demonstrations sufficiently indicate the high estimate placed on the Ohio as a channel of commerce by the States intervening between it and the seaboard, and at an early day in the progress of railroads and canals. More than a hundred million of dollars have already been expended by these States, and companies incorporated by them, with direct reference to the tonnage of the Ohio and its branches. At the time the great avenues which now conduct the commerce of the Ohio to the Atlantic cities were first begun, it is obvious that their enterprising projectors, in estimating the value of their schemes, had scarcely cast a thought beyond the banks of that river. The wide-spreading system of railroad communication which now traverses the western States, picking up the vast products of the country, at every point, had not been foreseen, in one-half its present proportions, by even the most sagacious of these wise men. The Ohio river, thus extended in its relations, and constituting an indispensable link in a grand scheme of commerce between the Atlantic ports and the western and southwestern States, its uninterrupted navigation has become a matter of countless value to commerce, embracing within the scope of its beneficial consequences nearly one-half of our great country.

As for the extent and value of the tonnage of this river, the committee do not deem it necessary to illustrate its magnitude by an array of details; nor, indeed, could they conveniently do so with reliable accuracy. The most of the statistics they can find on the subject are largely conjectural. In a report made to the Secretary of War in 1848, by J. J. Abert, Esq., chief of the Topographical Bureau, we find the steam tonnage of the western rivers estimated at 426,278 tons, and the floating value of the commerce put down at \$296 613,000; but what portion of this can properly be claimed for the Ohio does not appear. Mr.

Abert's estimate of the present value of the tonnage of the western rivers, as stated to a member of the committee, is six hundred millions!

A report of Captain Palmer, a topographical engineer of good abilities and experience, on the commerce of the Ohio river for the year 1856, is perhaps the most authentic and direct information that can be had at present. In that report we find the whole number of steamers on the Ohio proper put down at 400, the annual voyages at 8,642, and the freight at 2,592,600 tons; the whole number of flat-boats at 6,000, the voyages at 9,000, and the freight at 450,000 tons, making a total tonnage of 3,042,600 tons, which is valued at \$134,130,000. In this estimate the commerce of two of the greatest branches of the Ohio, (the Cumberland and the Tennessee) is not included. Were this added, it would swell the aggregate to near two hundred millions of dollars. The number of passengers moved by the steamers for the year 1856 Captain Palmer has put down at 1,150,453, exclusive of those carried on ferry and canal boats; and he has valued the total commerce of the Ohio valley, moved by land and water for the same year, at the enormous sum of \$371,255,836.

The Ohio is a noble river, furnishing, with its main stem and branches, more than three thousand miles of connected steam navigation, sustained by tributaries which traverse seven great States of the Union, and possessing, for an average of more than eight months of the year, the capacity to convey upon its surface, free of harm from breakers or shoals, any number of steamers and amount of tonnage. The willing contribution of waters from the States of Pennsylvania, New York, Virginia, Ohio, Kentucky, Indiana and Illinois, for this period of the season, confers upon it great excess of capacity; but when the drought comes on, the mountain rivulets withhold their supplies, the runs and creeks and larger feeders gradually fall away, until the main stem is reduced below the point of efficient navigation, and at times so low that the surface is penetrated by the rugged bottom. Then the busy and cheering scene, usually presented on this great river, becomes sadly changed. Solitude and apathy take the place of robust enterprise and industry. The general noise and bustle of business is silenced; the steamers remain almost stationary, their crews run idle; intercourse between the river points is suspended; trade is stagnated; industry checked, and the just ends of commerce paralyzed.

This river is a great artery of inland commerce, eminently national in all its characteristics, wide-spreading and generous in the benefits which its navigation bestows, promoting the ends of commerce and trade, not only through the agency of its principal branches—the Alleghany, the Monongahela, the Muskingum, the Kanawha, the Sciota, the Kentucky, the Green, the Wabash, the Tennessee, the Cumberland, and others—penetrating, as these branches do, into seven great States, unsurpassed in the extent and value of their agricultural and manufacturing productions, but through all the artificial channels of trade and travel, connected with the main river or its branches, whether railroad or canals, running east or west, north or south, and which are largely sustained by reciprocal patronage with it; the whole necessarily operating as a common system, no link of

which can suspend its operations without entailing a portion of the evil on the remainder. The paralyzing effects of the suspension of navigation on the Ohio is not confined alone to the cities of Pittsburg, Wheeling and Cincinnati, but it is felt in the cities of New York, Philadelphia and Baltimore on the seaboard, and at other less important points. This condition of the river for but a short period has a most prejudicial influence upon its aggregate operations for the year, as it throws a degree of uncertainty about its commerce, and trade seeks other channels; perchance it comes round by sea from New Orleans, instead of pursuing the uncertain navigation of the river. Its effects upon the business of Pittsburg, the greatest commercial and manufacturing city in the west, is most striking and prejudicial, producing a general depression in all departments of industry. If no other interests were involved, the welfare of this great city, so remarkable for its progress in the mechanic arts, and for the extent, variety, and excellence of its manufactures, should be of itself object enough to command the notice of Congress.

But, as has already been shown, seven great States are washed by this river or drained by its tributaries, each of which are more or less interested in its free and constant navigation. And to this number, indeed, we might justly add the States of Tennessee and Alabama, as joint owners of the navigable portions of the Tennessee and Cumberland rivers, making in all a family of nine States, containing a population of not less than fifteen millions, being more than one-half of the aggregate population of the United States. To trace the influence of this channel of trade through all its ramifications would be a difficult, if not an impracticable task. It is felt with peculiar force at all the ports on the southern and western rivers, covering a connected steam navigation of more than sixteen thousand miles, the most widely separated, exchanging their products at short intervals.—The city of Pittsburg alone, situate at the eastern extremity of the Ohio, to say nothing of her vast manufactures, sends out annually on this long line of travel from fifty to sixty new steamers to trade alike with Louisiana, Arkansas and Texas, in the south, as with Iowa, Wisconsin and Minnesota, in the west, their pilots becoming equally familiar with the channel among the stumps on Red river, or the rocks of the upper Mississippi.

May it not be safely claimed, then, in view of the foregoing facts, that if the navigation of the Ohio river be not national in its characteristics and consequences, and its improvement be not a fair subject for national care and aid, then no such object can be found within the broad limits of the United States of America.

That this navigation ought to be improved all must agree; that the work is too great for individuals, even if possessed of the right to do it, is clear; and no State possesses the necessary jurisdiction over the river, if otherwise prepared to accomplish the end; hence the application to the general government.

Your committee do not propose to discuss in detail the various schemes which have been presented at different periods for the improvement of this navigation. There are four plans, however, the leading characteristics of which it would seem proper to notice briefly.

First, then, is the scheme of wing dams, by which it is proposed to contract the flow of water at different points to the boat channel, and thereby give depth enough to pass freighted vessels, even when the river is very low. This system has usually been preferred by the officers of the government, and has been frequently resorted to in the improvement of rivers like the Susquehanna and Delaware, admitting only of a descending navigation. But in the case under consideration, so far as the examinations have gone, it does not seem to furnish an adequate remedy. The surveys which were made on the upper Ohio in 1837 and 1838, with reference to this plan, as may be seen by the profiles and calculations filed in the Topographical Bureau, and the report of the engineers in House document No. 50 of the 2d session of the 27th Congress, show this plan as only equal to the production of two, and possibly two and a half, feet of water on the bars, while freighted boats of good size require from three and a half to four feet.

Another mode of improvement, which has been somewhat discussed by scientific as well as practical men, is, to cut channels in the bed of the river at the shoal points, so as to attract the necessary depth of water. The objections urged to this scheme are to the effect that these artificial channels will be liable to fill up with sand and gravel, just as the natural bed of the river is now filled up, and also that the water will not be sufficient, in dry seasons, to supply these channels. The latter objection, it is feared, is too well founded, whilst the former may be good to a limited extent; but it would seem very evident that to excavate the bottom on the shoal bars would equalize the flow of water, and to some extent aid the navigation; nor is it at all clear to the committee that these channels would be as liable to fill up as the bed of the river. The current and weight of water which would follow from lowering the bottom of the river would, in some measure, protect them against the usual accumulations.

A third plan, which has occupied a large share of public attention, proposes to reduce the river in its full extent to a slack water navigation, by means of dams at the different and necessary points, constructed with locks, to pass the boats and craft on their downward and upward courses. Against this scheme a variety of objections have been urged, such as that it will require the construction of forty-five or fifty high dams, costing a very large sum of money, liable to constant decay, and to be swept away by the floods; that the locks could not have the capacity to pass the number of crafts that would be presented at certain periods; that it can only be introduced as a whole system, and that the derangement of any part of it would arrest the navigation on the whole. The committee are not prepared to judge of these objections; but it obviously proposes a very violent interference with the natural laws of the navigation, and in doing this it may possibly invade the rights which all have to the free use of the natural navigation of the stream. The descending tonnage, in the shape of lumber, iron, coal, and other products, might be rendered liable to unwarrantable interruption, and consequent increased cost of transportation. The effect of the dams on the Susquehanna at different points, for the purpose of feeding the Pennsylvania canals, have

illustrated, to some extent, the character of this objection. In works of this kind, the agency of art, it is evident, should, as far as practicable, conform to the laws of nature; acting with, rather than usurping, their functions. But this mode of improvement has many intelligent advocates and inviting characteristics; but the datum before the committee is quite insufficient to warrant an opinion as to its utility.

This brings us to the consideration of the plan indicated in the bill offered by the senator from Ohio—a system of reservoirs to be established on the tributaries of the river, to preserve the water when it is superabundant, and supply the navigation during the season of drought. This scheme was first proposed, and is still advocated, by Charles Ellet, jr., a civil engineer of great experience and high attainments. It was submitted to Congress by its author during the session of 1849 and 1850. In the Senate it was favorably considered by a select committee, and, after full discussion, a bill was passed providing for the prefatory surveys and examinations. The proposition had the hearty sanction of that eminent statesman, Henry Clay, as indicated in the course of the debate. In alluding to the probable results of the proposed surveys, Mr. Clay remarked, that “for less money than the cost of a custom-house in New York or Boston, we may effect an object for which I contend that if twenty millions were applied, and the object could be accomplished by that amount of money, it would be a profitable, just, and national appropriation of the public funds.” Then again: “The conviction is strong upon me that this project will ultimately prevail. I think we adopt what nature points out to us by constructing reservoirs to supply a deficiency of water in the channel at certain seasons of the year.” The sagacious mind of Mr. Clay at once perceived that this mode possessed at least the merit of consistency with the laws of nature, aiding, rather than violating them in its practical workings; and in this particular it differs favorably from the plan of dams. The practicability of the scheme, however, is largely problematical. It has nowhere been tested on so large a scale, and there is a grandeur in the proposition, which at first almost startles the imagination, and would seem to embarrass the judgment.

It has, however, not only had the sanction of eminent statesmen, but many scientific gentlemen and practical engineers, after critical examination, have become its zealous advocates. It has been usefully employed on a small scale to sustain the navigation of the Schuylkill river, and also to supply certain of the canals in Pennsylvania. Mr. Ellet, its projector, in a communication to the committee, shows that the reservoirs now used to supply the canals of the State of Ohio contain water enough to sustain the navigation of the Ohio river at a depth of five feet for fourteen days, or at three feet for more than a month.

The Mississippi river has been pointed to as furnishing an illustration of the plan by nature, the numerous small lakes at its sources performing, as is claimed, the offices of reservoirs, first accumulating and then gradually discharging the water into the channel of the stream, and hence the peculiar uniformity in the flow of the current of that river.

In a brief essay, of recent date, by A. A. Humphreys, a topographical

engineer of high attainments, devoted to the subject of "improving the navigation of a certain class of rivers during low water, and restraining their floods by reservoirs—by floods or artificial lakes"—we find the following:

"In a paper upon the nature of lakes, and of the works required to regulate their efflux, read before the Imperial Royal Institute of Lombardy, in August, 1845, and published at Milan in 1846, Mr. Lombardini dwells upon the beneficial influence of the lakes of Italy, in regulating the flow of the waters of the Po, restraining its floods by diminishing the volumes of its great tributaries to one half and one third of what they would be but for the interposition of these lakes, (which at such times discharge so much less water than they receive,) and in preventing excessive low water in that river by increasing the flow at that time, thus tending to equalize the volume of water at all seasons.

"This moderating influence of the lakes had been previously pointed out by Mr. Lombardini, in detail, in a paper published in 1843.

"At his suggestion, artificial works have been successfully resorted to at the outlet of one of these Italian lakes, to prevent, in conjunction with other works, inundations on the river issuing from it, in the country below.

"The three largest of these lakes are 50, 40, and 32 miles in length, with mean breadths respectively of 1, 2, and $4\frac{1}{2}$ miles. Their ordinary surface levels are respectively $3\frac{3}{4}$ feet, $5\frac{3}{4}$ feet, and $1\frac{1}{2}$ feet above their low water marks; their ordinary floods $8\frac{3}{4}$ feet, 13 feet, and $3\frac{1}{4}$ feet above the same, and their extraordinary floods $13\frac{1}{2}$ feet, 20 feet, and $5\frac{1}{4}$ feet above the same levels.

"The extraordinary floods of the past year in France have attracted the attention of the Emperor of France to the various plans proposed to prevent these disastrous inundations, and in a letter to the minister of public works, he has directed such examinations and investigations to be made as will show the degree of practicability of the plans just enumerated, together with others to which it is not now necessary to refer.

"Among the Smithsonian Contributions to Knowledge, published in December, 1849, is an interesting paper by Charles Ellet, jr., esq., 'upon the physical geography of the Mississippi valley, with suggestions for the improvement of the Ohio and other rivers.'"

"In the spring and summer of 1849, Mr. Ellet made a series of experiments on the discharge of the Ohio at Wheeling, for the purpose, mainly, of ascertaining the practicability and cost of supporting the navigation of the Ohio, by supplying the channel with water from reservoirs properly constructed upon its tributaries.

"The records of the river gauge at this place for several years previous enabled him to apply the results of his experiments to the various conditions of the river throughout that time, and to exhibit the deficiencies in the volume of the river at Wheeling in low water, which he proposed to supply from the reservoirs in order to keep up the navigation of that stream.

"These quantities do not vary greatly from those of the Rhone at Lyons, which it was proposed to supply from Lake Geneva.

"These investigations show it to be desirable that a survey of the Ohio and its tributaries should be made to determine if it be practicable, by the use of reservoirs upon its tributaries, to render the flow of that river more equal at all seasons, and thereby to maintain permanently a depth suitable for navigation by steamers of considerable draft, and restrain the floods within harmless bounds."

It is very justly claimed, in support of this system, that each step in the progress of the work will do some good and no harm; that if it be commenced and but partially completed it will contribute in proportion to the end in view; it may give one or two feet of additional water to the channel without having the capacity to give more; should it fall far short of the demands of the navigation, and it be found necessary to resort to some other plan, it could not fail to aid that scheme whatever it might be; for no plan has been suggested that would not be materially aided by reserving the excess water of the spring season to be used when the tributaries get low.

That the supply of water for the whole season, if equally distributed, is immensely above the demand is obvious. Indeed, the measurements made by Mr. Ellet at Wheeling, in 1849, show that the volume of water which flowed by that point in a single day, when the river was swollen to the height of a flood, would be sufficient to maintain a depth of five feet on the most shoal bars in the upper part of the river for a month or more.

The elements furnished by nature, it is clear, are equal to the formation of an uninterrupted navigation throughout each entire year, the only question is as to the ability of art to apply these elements so as to accomplish the desired end.

It is proper, also, to state that this scheme has encountered vigorous opposition, and even ridicule, at the hands of men of intelligence and science; not so much, however, on the main point of practicability as on minor difficulties. Indeed, some objectors have conceded to it correct principle and entire practicability, except as to the space for the reservoirs. The proposed surveys are intended to decide these points and throw additional light on the whole subject, and on all the plans and problems involved, without which, in the opinion of the committee, no reliable selection of a plan can be made.

The memorial of the board of trade of the city of Pittsburg, which it is proper to notice at this point, presents several distinct propositions.

The "appointment of a commission of competent engineers, who shall have authority to direct all surveys which they may deem necessary, with the view to the improvement of the navigation of the Ohio and the upper Mississippi; and the donation of public lands to a company chartered, or to be chartered, by the several States bordering on the Ohio river, the proceeds to be expended in the improvement of the Ohio," are the most important, and would seem to demand special notice.

The measure which the committee have concluded to recommend to the Senate is, largely a compliance with the first named suggestions of the memorialists, and is intended to accomplish the same object in a somewhat different mode.

As to the second proposition, the committee cordially concur in the sentiment of the memorialists, "that the object of securing the most permanent and useful navigation of the Ohio river that may be found practicable, is of greater national importance than any other similar work to which the government has yet given its aid," the only difference being as to the mode of accomplishing the desired end.

So far as concerns the constitutional right of Congress to donate public lands to a corporation for that purpose is concerned, the committee do not care to pass upon the question. The circumstances surrounding the proposition of the board of trade render this unnecessary. No company for the purpose contemplated has been brought into full existence. The only step in that direction, so far as the committee can discover, is an act by the legislature of Pennsylvania incorporating a company to improve the navigation of the Ohio river, and vesting the incorporators with very wide discretionary powers over the subject, with the right to construct dams, locks, canals, or any other artificial works which may be deemed proper, and to tax the tonnage of the river to a limited extent to pay expenses, &c. It is not pretended, however, that this act can be made available outside of the limits of Pennsylvania without the concurrence of the other States bordering on the river; nor will it be claimed that it would be wise to commence a system of improvement that did not embrace the navigation in its full extent; most certain it is that the general government could not consent to aid any partial or local plan. The Ohio is a national highway, and no single State can claim jurisdiction over it, or pretend to the right to disturb the flow of its waters, to regulate the transportation or tax the commerce that floats on its surface. The assent of the States of Ohio, Virginia, Kentucky, Indiana, and Illinois, must, therefore, be had to the legislation of Pennsylvania before it can be available for the object intended. Until then it would seem to be unnecessary to pass upon the question of donating public lands to an embryo corporation which may never be vested with sufficient authority to prosecute the object designed by its founders. Did this concurrent legislation depend upon the action of a single State, it might be anticipated with some measure of confidence, but where so many are to be consulted, and such vast and varied interests considered, and the rights of all to a great natural navigation protected, the result must be quite too uncertain to be made the basis for important congressional action. The committee, with the utmost anxiety to accomplish the main object of the board of trade of Pittsburg, do not feel at liberty to submit a proposition to the Senate which could not be sustained.

They respectfully recommend the adoption of the accompanying bill.

Rep. Com. 319—2

IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1857.—Ordered to be printed.

Mr. EVANS made the following

REPORT.

[To accompany bill H. R. No. 438.]

The Committee on Revolutionary Claims, to whom was referred an act from the House of Representatives (No. 438) for the relief of the heirs of Captain Thomas Gill, have considered the same, and submit the following report:

The claim of the petitioners rests on the allegation that their father, Captain Thomas Gill, was an officer in the continental army of the revolution, and served to the end of the war, whereby he became entitled to receive the commutation of five years' full pay under the resolution of the 22d of March, 1783, in lieu of the half pay for life under the resolve of the 21st of October, 1780.

If this were true, there could be no doubt they should be paid as provided for in the act of the House of Representatives. The committee think that the said Thomas Gill did perform all the services set out in the petition, and that he may have been a brave and valiant officer; but to entitle him to the commutation under the resolve before stated, he must have been an officer in the State line of South Carolina, attached to the continental army.

Soon after the passing of the act of 7th of June, 1832, Thomas Gill applied for a pension under that act. The facts stated in his memorial are abundantly sufficient, if satisfactorily established, to entitle him to a pension as a militia officer; but, taken in connexion with the history of the times, falls far short of any evidence that he or his company belonged to the continental line, for these reasons:

1st. He states that he was elected by his company to the command of it—a mode of selection common to the militia, but unknown to the continental lines.

2d. That the service which he performed was mostly under General Sumter. Now, it is well known that General Sumter was a State militia general, commissioned as such by the governor of the State. He may have been an officer of lower grade before the surrender of Charleston, in May, 1780; but the battles which he fought, as set out in the memorial of Captain Gill, were fought whilst he was a militia

general, and in command of volunteer militia soldiers, of which no doubt Captain Gill was one.

3d. On the 13th of January, 1781, the Congress of the United States, after reciting the eminent services of Brigadier General Sumter, of South Carolina, at the head of a number of volunteer militia from that and the neighboring States, in the various battles set forth by Captain Gill in his application for a pension, "*Resolved*, That the thanks of Congress be presented to Brigadier General Sumter, and the militia aforesaid," &c.; which plainly shows that General Sumter's command was of the militia.

4th. The petition states that Captain Gill's command was a troop of horse. This could not well be, if he belonged to the continental line, because by the reorganization of the army, in March, 1779, and October 1780, the quota of South Carolina was composed entirely of infantry, and no cavalry; whilst it is known from contemporaneous history that the militia, when in active service, generally carried their own horses with them.

On carefully reviewing all the evidence of the case, the committee have been forced to the conclusion that the services of Captain Gill were rendered in the militia; and as half-pay and commutation were promised only to such officers of the continental line as should serve to the end of the war, or were reduced by any new organization of their respective corps, or of the army, and not to militia officers, however deserving they may have been, or however meritorious their services to the cause of independence, the committee, therefore, recommend that the act do not pass.

IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1857.—Ordered to be printed.

Mr. YULEE made the following

REPORT.

[To accompany bill S. 520.]

The Committee of Claims, to whom was referred the petition of George Phelps, report:

The petitioner presents the following account, viz:

“THE UNITED STATES,

“To George Phelps, DR.

“May 1, 1846. To extra services, as messenger, rendered in the Quartermaster General's Office, War Department, at nights and Sundays after the closing of the public offices, from 1st December, 1839, to 1st July, 1846, six years and five months, at \$15 per month, \$1,155.”

Mr. Phelps was the regular messenger in said office during the period named, at a salary of \$500 a year.

In answer to inquiries addressed to him, the quartermaster general states that the allegations contained in the memorial are true; that in consequence of the pressure of business in the office, arising out of the Indian hostilities in Florida, he was obliged to remain in the office almost every afternoon, and often until late at night, and often a portion, and sometimes the whole of Sundays; and that Mr. Phelps was obliged to remain and close the office, &c.

General Jessup adds: “The sum he asks is small compared with the amount of extra labor he has performed; he has fairly and honestly earned it.”

Under the peculiar circumstances of this case, and in view of the strong endorsement of its equitable merits by the distinguished head of the Quartermaster General's Department, the committee report a bill for the payment of the sum claimed

IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1857.—Ordered to be printed.

Mr. WELLER made the following

REPORT.

[To accompany bill S. 522.]

The Committee on Military Affairs, to whom was referred the memorial of Adam D. Stewart, having had the same under consideration, report:

That the memorialist prays for the passage of an act explanatory of the act of 18th August, 1856, granting him a commission upon certain moneys collected and received by him as chief of the pay department of the United States army in Mexico, during the war with that republic.

The following is the act:

AN ACT for the relief of Adam D. Stewart, and of Alexander Randall, executor of Daniel Randall.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay to Adam D. Stewart, and to Alexander Randall, executor of Daniel Randall, out of any money in the treasury not otherwise appropriated, a commission of one per cent. upon such amounts of money as were respectively collected by the said Adam D. Stewart and Daniel Randall, and by them disbursed or paid into the treasury of the United States, in virtue of the authority specially invested in them, by order of the commanding general of the United States army, and arising from duties on imports, taxes, or other assessments in Mexico, during the late war with that republic.

Colonel Stewart's account is as follows:

THE UNITED STATES OF AMERICA

To Adam D. Stewart, DR.

To commission upon the following sums of money collected and received by him as chief of the pay department in Mexico, during the war with that republic:

1848.—February, March, and April.—For amount received from F. M. Dimond, collector at Vera

Cruz \$290,003 33

April 28.—Amount received from W. DeBrumina & Co., for duty on gold and silver bullion.....	\$16,923 31
May 1.—Amount received from E. Voss, same...	1,872 65
May 9 and 16.—Amount received from L. Davidson, Mr. Belmont's two drafts upon him.....	200,000 00
May 11.—Amount received from Mexican merchants for duties at Vera Cruz.....	169,605 62
	<hr/>
	678,404 91
	<hr/>

Upon the following sums, being received from other officers of the government, no commission is claimed :

1848.—April 22.—Received of D. Randall, deputy paymaster general.....	\$240,925 04
May 23.—Received of General P. F. Smith, for gambling license.....	2,000 00
June 2.—Received of Major General W. O. Butler, balance secret service fund.....	2,544 50
June 21.—Received of F. M. Dimond, collector at Vera Cruz.....	108,000 00
July 13.—Received of Paymaster E. Kirby.....	125,000 00
	<hr/>
	478,469 54
	<hr/>

Congress obviously intended by this act to allow this memorialist a commission upon such sums of money as came into his hands from the sources stated in the first part of the above account, viz : upon \$678,404 91, and the sum over and above the amount paid by him to regular and volunteer troops, was transferred by him to the United States treasury. But in consequence of the omission of the word "received" in the above act after "collected," the Secretary of the Treasury decided that Colonel Steuart was only entitled to a commission upon \$188,401 88, "the amount collected by him for duties on imports at Vera Cruz," and refusing to receive the sum thus awarded him, he again presents his claim to Congress.

Further examination of this case confirms the committee in the opinion heretofore expressed of it, and with a view of doing the justice contemplated by their former action, they report an explanatory act, as prayed, authorizing the payment of a commission of one per cent. upon the amount first stated above, (\$678,404 91.)

The committee are more fully impressed with the equity of this decision by the fact, that since their last report an act was passed (approved August 16, 1856,) allowing to Samuel Forrest 2½ per cent. commission "upon the amount of military contributions received by him while acting as purser to the United States ship Ohio, on the coast of the Pacific, during the war with Mexico." The collection, transportation, and disbursement of these funds by this memorialist was attended by dangers, risks, and responsibilities, and involved the keeping of books, accounts, &c., and the committee have awarded the smallest rate of compensation ever allowed for such extraordinary services.

IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1857.—Ordered to be printed.

Mr. WADE made the following

REPORT.

[To accompany bill S. 523.]

The Committee of Claims, to whom was referred the memorial of George M. Weston, commissioner of the State of Maine, report:

The claims presented in this case arise under the operation of the treaty of the 9th of August, 1842, for the settlement of the northeastern boundary line between the United States and the British province of New Brunswick.

At the last regular session of Congress, the Senate, at the suggestion of this committee, and for reasons assigned in their report No. 228, (1st session, 34th Congress,) adopted the following resolution, viz:

Resolved, That the Committee of Claims be authorized to appoint an agent to take and receive proof, in such manner as the committee shall prescribe, as to the claims of individuals described in the memorials of George M. Weston, commissioner of Maine, now pending before the committee, to be reported to the committee at the next session of Congress.

In conformity with this resolution, the committee appointed an agent, who proceeded, under their instructions, to the locality in which the claims originated, took and received such testimony as was offered in support of the several cases, and personally inspected the lands in question.

It appears from the report and statement of the agent, and the testimony and proofs submitted, all of which are hereto annexed and made a part of this report, that these claims may be properly divided into three classes, to wit:

FIRST.—*Possessory claims.*

This class arises under the fourth article of the treaty, which provides that persons who had settled upon the disputed territory, and had been in possession of their lots for more than six years before the date of the treaty, should be confirmed in their titles and quieted by a release.

Of this class there are about one hundred cases, covering about

8,434 acres of land, the title to which being, by the provision of the treaty, vested in the occupants, is thereby lost to the proprietors, and for which compensation is claimed. The value of this land the committee have fixed, from the testimony, at \$4 per acre, amounting in all to \$33,736, and for the payment of which provision is made by the first and second sections of the accompanying bill.

SECOND.—*Timber depredations.*

This claim is for timber alleged to have been taken from the lands of the claimants during the suspension of the jurisdiction of the United States, and of the State of Maine at the request of the United States, pending the negotiations for the settlement of the disputed boundary. It is based upon the ground, that as the property of the citizen was perilled and actually lost in the accomplishment of an end valuable to the general government, it should be regarded as property taken for the public use, and for which compensation should be made. The amount claimed under this head is \$23,646, being for the timber taken from 23,646 acres of land, at \$1 per acre. The proof in the case would indicate the allowance of a larger sum; but as the testimony is necessarily indefinite, and resting to a great extent upon the judgment and recollection of various persons, and as the commissioner has expressed his satisfaction with that sum, the committee have adopted it, and provided for its payment by the third section of the accompanying bill.

THIRD.—*Variation of the boundary line.*

The claimants of this class ask indemnity for lands lost to them by the operation of the first article of the treaty, by which a conventional line was substituted for the "direct north" line required by the treaty of 1783. It appears that about ten thousand acres of land, previously granted by the State of Massachusetts, and based upon the old treaty line, was cut off by the conventional line adopted by the treaty of 1842, and thereby lost to the proprietors.

The proofs presented of the facts upon which this class of claims are based are not sufficiently complete and definite to authorize the committee to propose any measure of relief.

APPENDIX.

UNITED STATES SENATE,
Washington city, August 7, 1856.

SIR: The Committee of Claims, acting by authority of a resolution of the Senate passed on the 18th day of July, 1856, have appointed you an agent to take and receive proof as to the claims of individuals described in the memorials of Geo. M. Weston, esq., commissioner of Maine, now pending before the committee.

In the execution of the duty thus assigned you the committee directs that, as soon as may be, after the adjournment of the present session of Congress, you do proceed to the county or counties, in the State of Maine, in which the lands are located upon which the said claims are predicated, and after giving proper notice to the claimants or their agent, you will proceed to take and receive such proof as may be presented to you, in regard to the validity and amount of the several claims. You will receive and examine such documentary and record evidence, bearing upon the cases, as may be exhibited to you, and examine such witnesses as may be brought before you by the parties and such as you may think proper to call upon to testify, both by direct and cross-examination, particularly as to the title and value of the property at the time it was taken. The testimony, including the answers to questions, should be taken down in writing and verified by oath.

The object being to get at the real facts, the law, justice, and true amount involved in each case, and to guard against any possible imposition by ex parte evidence, you will, in addition to the above, make such personal examinations of the property as you may deem expedient.

You will make a report of your doings, accompanied with the testimony taken and information obtained, with your opinion thereon, to the Committee of Claims of the Senate, at the commencement of the next regular session of Congress.

RICHARD BRODHEAD.
Chairman of the Committee of Claims.

N. C. TOWLE, *Agent, &c.*

DECEMBER 1, 1856.

SIR: In the discharge of the duties assigned me, as agent, to "take and receive proof as to the claims of individuals described in the memorial of Geo. M. Weston, esq., commissioner of Maine," under a resolution of the Senate of July 18, 1856, and in conformity to your instructions, I proceeded, immediately after the adjournment of Congress, to Aroostook county, in the State of Maine, the locality in which the claims originated, and in which most of the persons interested reside.

I examined the lands in question, and received the statements of a

large number of the settlers in relation to their claims; I also received such testimony as was presented in relation to the timber taken from the land during the suspension of the jurisdiction of the United States, and of Maine, over the territory, by an arrangement between the governments of the United States and Great Britain, and for which payment is claimed of this government.

All the testimony was taken down in writing, together with the questions propounded by me and the answers thereto, and is herewith submitted.

The accompanying statement contains a general view of the claims presented and of the evidence by which they are sustained.

All of which is respectfully submitted.

N. C. TOWLE,
Agent, &c.

Hon. RICHARD BRODHEAD,
Chairman Senate Committee of Claims.

Statement of the claims represented by Geo. M. Weston, esq., commissioner of Maine, growing out of the settlement of the northeastern boundary question, by the treaty of August 9, 1842, submitted to the Senate Committee of Claims by N. C. Towle, agent, under the resolution of the Senate of July 18, 1856.

SKETCH OF THE NEGOTIATIONS.

The difficulties in reference to the northeastern boundary commenced immediately after the conclusion of the treaty of 1783, and it was not until after the treaty of 1794 that the identity of the river St. Croix was determined, and the point to be regarded as the source of that river was ascertained and fixed. The next point named in the treaty was the highlands that divide the waters flowing into the Atlantic ocean from those which flow into the Gulf of St. Lawrence. The British government claimed that those "highlands" must be found south of the valley of the St. John's, a river which flows into the bay of Fundy; while the United States claimed that the "due north line" should be extended across the St. John's and until it reached the "highlands" immediately south of the St. Lawrence river. The distance between these two ranges of highlands exceeded one hundred miles, and involved the claim to a large territory of rich and valuable country, embracing the entire valley watered by the Aroostook river, as well as a large portion of that watered by the upper St. John's and its tributaries.

The two governments finding it impracticable to make any further progress in ascertaining the boundary of the two countries, agreed by the convention of 1827 to submit the questions in dispute to the arbitration of the king of the Netherlands, who decided that no single range of highlands conforming to the description in the treaty was to be found, but that a portion of the description in the treaty would be

applicable to the highlands north of the St. John's, as claimed by the United States, and another portion to the ridge south of the St. John's, as claimed by Great Britain; and he came to the conclusion that a division of the disputed territory between the two countries was the best practicable mode of settlement. This decision, had it been accepted, would have given the valley of the Aroostook to the United States.

TIMBER DEPREDACTIONS.

In 1832 the valley of the Aroostook was an unbroken wilderness. The broad intervals and the gentle slopes along that river and its tributaries were covered with a heavy growth of pine, spruce and maple forests. The lands bordering upon the St. John's had already been stripped of the more valuable timber, and the attention of the lumbermen began to be directed to the tributary streams. Immediately prior to the rejection of the award of the king of the Netherlands, the principal scene of lumbering operations in that region was on the Tobique, a considerable stream, which flows into the St. John's from the east, about six miles below the mouth of the Aroostook.

Prior to the rejection of the award in 1832, the valley of the Aroostook, which had been assigned to the jurisdiction of the United States, remained free from the operations of the lumbermen; but when that fact became known, and the British claim of jurisdiction over that region was revived, these men being British subjects, began to turn their attention to that rich and tempting field of operations. Settlers from the neighboring province began to make their way up the Aroostook, and to occupy and improve the lands on both banks of that river. Large lumbering operations were prosecuted at the same time; and, as appears from the evidence taken, between the time of the rejection of the award of the arbiter, in 1832, and the time of the forcible occupancy of the territory by the authorities of Maine, in 1839, most of the valuable lumber for a considerable distance on each side of the river had been taken off, and the lands in the immediate vicinity of the river, for ten or fifteen miles from its mouth, were taken possession of and improved by the squatters. All obstructions to these proceedings were precluded by an arrangement between the two governments that neither should exercise jurisdiction over the territory in dispute.

In a communication addressed to the British minister, dated July 21, 1832, the Secretary of State says:

"Until this matter [the negotiations in reference to the disputed line] be brought to a final conclusion, the necessity of refraining on both sides from any exercise of jurisdiction, beyond the boundaries now actually possessed, must be apparent, and will, no doubt, be acquiesced in on the part of his Britannic Majesty's provinces, as it will be by the United States."

To this proposition the British minister responded, under date of April 14, 1833, that "his Majesty's government entirely concur with that of the United States in the principle of continuing to abstain, during the progress of the negotiation, from extending the exercise of jurisdiction within the disputed territory beyond the limits within

which it has hitherto been usually exercised by the authorities of either party."

This arrangement was substantially adhered to until the winter of 1839, when the authorities of Maine, becoming aroused at the extensive depredations which were being committed upon what they regarded as the valuable property of the State and its citizens, resolved to interpose the State sovereignty for the protection of its own rights and interests, regardless of the diplomatic understandings of the general government. They accordingly despatched an armed posse with instructions to arrest the lumbering depredations in the region of the Aroostook, and to assert and maintain the jurisdiction of the State over it, but not to interfere with the peaceable occupancy of actual settlers.

It appears from the testimony of D. O. Parkes, George Grantham, and M. Kean, who were on the ground at the time and speak from personal observation, that these lands were well timbered, and that the timber was mostly cut and taken off between 1832 and 1839—during the period of suspension of jurisdiction. Their average estimate of the quantity of timber on the land at the commencement of the operations (1832) was 2½ tons. Mr. Grantham thinks two-thirds of it was taken off between 1834 and 1839. The other witnesses state that most of it was taken during that period.

These statements and estimates are corroborated by Mr. Pattee, one of the State commissioners, and by Mr. Hamlin, State land agent, and several others, whose affidavits are among the papers.

It is clear, from the whole testimony, that the quantity of timber taken during said period could not have been less than one ton per acre; and that the price actually paid for stumpage, at the time, was not less than one dollar and sixty cents per ton. The value of timber upon the stump, in that vicinity, at this time and for several years past, is \$4 56 per ton.

The quantity of land upon which this stumpage is claimed is 23,646 acres, for which it is understood that the proprietors are willing to accept one dollar per acre as full compensation, although that rate is more than fifty per cent. below the value, as stated by the witnesses whose testimony was taken.

The fifth article of the treaty would seem to indicate that some arrangement had existed between the two governments designed for the protection of this property. It is as follows:

"Art. 5. Whereas, in the course of the controversy respecting the disputed territory on the northeastern boundary, some moneys have been received by the authorities of her Britannic Majesty's province of New Brunswick, with the intention of preventing depredations on the forests of the said territory, which moneys were to be carried to a fund called "the disputed territory fund," the proceeds whereof, it was agreed, should be hereafter paid over to the parties interested, in the proportions to be determined by a final settlement of boundaries, it is hereby agreed that a correct account of all the receipts and payments on the said fund shall be delivered to the government of the United States," &c., to be paid over to the States of Maine and Massachusetts.

Whether any money was received from the provincial government, under this article or not, does not appear from the papers or evidence submitted to me.

That this timber was lost to the proprietors during the suspension of the jurisdiction of the United States and consequently of the State of Maine over the territory, in accordance with the diplomatic arrangement referred to, appears to be clearly shown; but whether the government is legally or equitably bound to remunerate its citizens for property lost under such circumstances is respectfully submitted. That the State of Maine withheld the exercise of her authority over the territory as a matter of courtesy to the general government, and not in submission to recognized authority, is apparent from the fact that she resumed the exercise of her jurisdiction in 1839, without the consent of the United States. But if such courtesy was exercised in deference to the known wishes of the general government, and the citizen was deprived of his property in consequence, was not the property of the citizen the consideration, by fair construction, paid for the forbearance which the interests of the United States required, and therefore taken for public use?

POSSESSORY CLAIMS.

The fourth article of the treaty is as follows; viz:

"Art. 4. All grants of land heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified, and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land, by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall in like manner be deemed valid, and be confirmed and quieted by a release, to the person entitled thereto, of the title to such lot or parcel of land so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them respectively, which has heretofore been in dispute between them."

It has already been remarked, that upon the rejection of the award of the umpire in 1832, which had assigned the valley of the Aroostook river to the United States, the British claim to that territory was revived, and settlers from the neighboring province immediately commenced their settlements along that river, as well as in various other portions of the disputed tract. In order to carry this article into effect, so far as it applied to settlers upon the ungranted lands belonging to the States of Maine and Massachusetts, the authorities of those States, immediately after the ratification of the treaty, appointed a board of commissioners, for the purpose of locating the grants and determining the extent of the possessory claims therein

provided for. All claims to lands, through grants made by the government of Great Britain, as contemplated in the first clause of the 4th article, were examined and adjudicated upon by the commissioners, and ratified and confirmed to the persons in possession by the respective States.

In 1854, by authority of a resolution of the legislature of the State of Maine, another board of commissioners was appointed, with the view of carrying into effect the remaining clauses of the said 4th article, by examining into and providing for the quieting of the possessory and equitable claims of settlers. This board met upon the ground, and after hearing the statements and taking the proofs submitted to them, they proceeded to have surveyed and set off by metes and bounds, to the persons whom they found to be entitled under the treaty, the lots to which they were adjudged to have just claims. The whole number of claims thus passed upon by the board amounted to about six hundred and fifty, and the quantity of land surveyed and set off to them amounted to 71,562 acres, being a little less than an average of 100 acres to each claimant. More than one-third of this land had been purchased from the State, or had been contracted for before the date of the treaty.

It will be observed that the treaty provides that possessory claims extending back more than six years prior to its date shall be deemed valid titles. The commissioners set off, as coming under this head, 13,275 acres, divided amongst about 150 settlers.

The board of commissioners also went into the examination of the claims of persons who claimed to be equitably entitled to lands which they had improved, and of which they were in possession at the date of the treaty, but whose possession did not extend back six years.

So far as these claims depend upon the treaty, they are based upon the last clause of the 4th article, to wit: "And in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them respectively." The commissioners report about three hundred settlers of this class, claiming 31,400 acres.

A portion of these lands are located in townships, the title of which had passed from the State prior to their settlement, and of course a considerable time prior to the date of the treaty; and it is to this portion that the resolution of the Senate, authorizing this examination, particularly applies. These lots are principally located upon both banks of the Aroostook river, from the New Brunswick line through the townships granted many years ago to the town of Plymouth, Massachusetts, for the support of an academy, and to General Eaton, in consideration of his military services in the war with Tripoli. The settlers are mostly from the neighboring province, and made their settlements while that province claimed the jurisdiction of the country. The number of these improved and occupied lots, in the two townships, is ninety-seven, embracing, in the aggregate, about 8,434 acres. All of these lots, except about one thousand acres, are shown to have been occupied or improved more than six years before the date of the treaty; and, from proof submitted to me, and which is hereto annexed, I am satisfied that most of the lots embraced in the latter de-

scription, if not clearly shown to have been occupied and improved six years prior to the treaty, were, in fact, so occupied at that time, or very soon after, and that it would be a great hardship upon these poor settlers to make a distinction between them on so slight grounds. These settlers are all poor, and dependent for the support of themselves and their families upon the produce obtained by their own labor from their little possessions. Each family holds less, on an average, than 100 acres, and the improvements are generally of a very primitive character.

The Maine commissioners estimated, from actual observation, and from proof taken, the whole value of the property covered by these claims, in the two townships under consideration, (exclusive of the right of soil,) at about \$31,000; and from the testimony of one of the commissioners, hereto annexed, it appears that they valued the land at two dollars per acre—the value of the improvements averaging a little less than \$400 for each farm, and my observation would lead me to regard this as a very fair estimate.

It further appears, from the proof submitted to me, that the value of the improvements have not materially increased since the making of the treaty; and the reason assigned for the absence of improvements is the uncertain tenure by which they hold their lands. The State, while it has given titles to those settlers who had located upon the State lands, had failed to provide any security for them, and the proprietors under the original State grants were threatening to eject them unless their demands for payment for the land were satisfied.

Whatever the strictly legal and technical rights of the parties may be, it seems to be clear that “the most liberal principles of equity”—according to which the faith of the government is pledged to deal with these parties—requires either that their titles should be affirmed, or that some compensation should be made them for their improvements, by which they should be saved from the entire loss of all their hardly earned possessions, and from being turned destitute from their humble homes.

The uncertainty of their present condition evidently operates greatly to discourage and perplex them, and to retard their efforts to improve their condition.

The quantity of land covered by these possessory claims is 8,434 acres, and its value is moderately estimated at \$16,862, exclusive of the improvements. If the value of these be added, the amount will be \$49,139.

The commissioners of Maine, in their report to the governor, made during the last year, say: “The title to said lands can be procured from the present owners of the fee for two dollars per acre,” (page 30.) And in another part of their report they say: “The proprietors of said townships are willing to release their title to said lots for a reasonable compensation, or exchange the same for other lands belonging to the State, (page 17.)

It appears that the authorities of the State, anxious to carry out the beneficent provisions of the treaty towards these settlers in the most liberal and effective manner, caused these surveys to be made, and in all cases where the title was in the State, caused deeds to be executed

by the land agent conveying the lands to the settlers. This is all the State could be expected to do, although it appears, from the above remarks of the State commissioners, that the expediency of the State's acquiring these lands from the private proprietors, in order to quiet the possession of the settlers, had been entertained.

Should the United States compensate the proprietors for these lands, they should require that good and valid titles be made to the settlers, so that they should be secured from all future proprietary claims. Nearly fifteen years have elapsed since the conclusion of the treaty. Some of the proprietary titles have changed hands by private sales, and some of the lands have been sold by the State for taxes, and purchased in by the assignees of the old proprietors, by which they have acquired a title subsequent to the treaty, under which new embarrassments to the settlers might arise, unless guarded against by the provision above referred to.

Lists of the names of persons regarded as entitled to hold their possessions by virtue of the treaty, showing the quantity of land held by each, and the value of their improvements, together with a plan of the surveys made under the direction of the Maine commissioners, are hereunto annexed; from which it will be seen that the whole extent of land covered by these claims is 8,434 acres, and the value of the improvements thereon at the date of the treaty, and not materially changed since, is \$32,277. The value of the land, exclusive of improvements, is stated by Mr. Pattee and other competent witnesses, to be \$2 per acre, and not materially changed since 1842.

It appears from the records and papers exhibited that the following named persons hold the proprietary titles to these lands, and are the claimants to indemnity for the loss of title by the operation of the treaty, to the extent stated, viz:

Laura A. Stebbins, Catharine C. Ward, Rufus Munsen, and James A. Drew, jointly to 3,353 acres; on which the improvements are, \$10,711.

Edmund Munroe, three quarters, and Benjamin Sewall, one quarter of 3,385 acres; improvements, \$15,229.

James A. Drew and Rufus Mansur in equal parts, 1,692 acres; improvements, \$6,337.

It has been decided by the supreme court of Maine, in Little's case, (32 Maine Reports, 214,) that the treaty being the supreme law of the land, overrides all other titles, and *proprio vigore* gives title to those showing a possession in conformity to its stipulations. And this seems to be in accordance with the decisions of the Supreme Court, who held that "a treaty is the law of the land, and treated as a legislative act by the courts," (2 Peters, 314;) and the treaty for the acquisition of Louisiana, stipulating to protect the inhabitants of the Territory in their property, was so applied, (4 Peters, 511.) And Congress, by passing the act of the last session "for the relief of John S. Little," recognizes the principle of the responsibility of the government in these cases.

List of settlers on the Eaton grant, showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of the improvements thereon.

Names.	Acres.	Value.
John Sands and Thomas Walton	175	\$150 00
Do.....do	107	400 00
James Shea.....	86	350 00
Patrick Conly.....	1	150 00
Robert Richards.....	88	300 00
B. Shugren and J. Corkins.....	210	525 00
George F. Parks	117	350 00
Hannah Parks	135	300 00
D. O Parks	192	450 00
John Buber.....	77	375 00
William Buber.....	77	375 00
Charles Butler	52	300 00
Nathaniel Buber	61	200 00
Jesse Partridge.....	54	75 00
Moses Glass	1½	150 00
Patrick Somers.....	79	250 00
John Gallaughn.....	83	200 00
Elias Brown	69	400 00
Solomon Brown.....	72	450 00
Abel Humphrey.....	167	551 00
J. & E. Doyle.....	44	400 00
Samuel Work.....	79	550 00
L. Kelly.....	84	350 00
C. Gambeen.....	42	264 00
J. Walton.....	38	
Jonah Whiteknock.....	68	300 00
James Walton	35	250 00
Thomas Kelly	142	250 00
Patrick Kelly	182	375 00
Elizabeth Dudy	260	450 00
Dennis Hale	176	1,221 00
Elisha Hale.....	82	
James Keegan	112	
Add for error. (See testimony of S. B. Pattee, commissioner) ..		3,247
		106
		3,353
		10,711 00

List of settlers on the western section of Plymouth township, showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of the improvements thereon. Edmund Munroe and Benjamin Sewell, proprietors.

Names.	Acres.	Value.
A. & J. and A. & F. Bishop	6	\$800 00
John Lovely	98	400 00
Thomas Beaulean	75	700 00
A. & F. Bishop	48	300 00
W. & J. Bishop	127	600 00
Amos Bishop	80	300 00
John Flannery	51	175 00
Patrick Flannery	70	350 00
A. Giberson's heirs	101	200 00
Charles Hammond	44	175 00
William White	64	400 00
William Day	83	400 00
James Guigey	189	600 00
Daniel Turner	115	500 00
Isaac Smith	58	500 00
James Upton	138	700 00
Samuel Sands	46	
Richard Jordan	33	
William Haley	74	2,064 00
John Murphey	67	
William Upton	126	
Patrick Finland	121	
Sands & Walton	16	100 00
S. Work	21	
J. & E. Doyle	39	265 00
Margaret Doyle	126	500 00
Sarah McGlaughlin	199	650 00
T. Giveney and J. A. Drew	136	300 00
Edw. Guigey	251	800 00
Samuel Davenport	100	400 00
E. Watson	115	300 00
George Rogers	140	500 00
A. Clark	99	100 00
Thomas Amaden	77	450 00
Alex. Guigey	39	400 00
Samuel Farley	32	275 00
William Ward	56	275 00
John L. Higgins	75	300 00
Joseph Barnes	51	450 00
	3,385	15,229 00

List of settlers on the eastern section of Plymouth township, (Drew and Manson, proprietors,) showing the number of acres claimed by each under the 4th article of the treaty of Washington, and the value of improvements thereon.

Names.	Acres.	Value.
Thomas Russell.....	209	\$700 00
John Russell.....	84	600 00
Job Everett.....	52	275 00
John L. Higgins.....	38	.....
Joseph Barnes and Ward.....		
S. & J. Barnes.....	55	300 00
Patrick Flannery.....	33	30 00
Thomas Flannery.....	83	550 00
George White.....	192	700 00
George Dean.....	45	250 00
Joseph Fisher.....	216	400 00
Samuel Dean.....	139	532 00
Martin Murray.....	30	100 00
John Sterling.....	97	575 00
John McDonald.....	84	375 00
Henry Hurd.....	116	275 00
William Lundy.....	101	275 00
Michael McKinney.....	118	400 00
	1,692	6,337 00

VARIATION OF BOUNDARY LINE.

A further claim is presented for indemnity for a quantity of land which was lost to the proprietors by the adoption in the treaty of Washington of a conventional line from the monument at the head of the St. Croix, bearing westward from the direct north line required by the treaty of 1783.

By the treaty of 1783 the boundary of the two countries was to be a line drawn from the source of the St. Croix "directly north" to the highlands. By the treaty of 1814 it was provided that commissioners should be appointed to ascertain and determine the points mentioned, &c.

The point to be regarded as the "head of the St. Croix" was fixed upon by the two governments in 1794, and a monument was erected to mark the spot. The "direct north" line from that point was never surveyed and marked by the two governments, although some attempts were made for that object. In 1804 surveyors, under the direction and authority of the State of Massachusetts, run and marked a north line—up to which the State made sundry grants of land—which line corresponds very nearly with that run in 1840 by Major Graham, of the United States topographical engineers, and which is, without doubt, the true line of the treaty of 1783. The line adopted by the treaty of Washington of 1842 did not pretend to be the old treaty line, but a conventional line run and marked by an exploring party sent out by the joint commission appointed under the treaty of

Ghent, but never claimed by either party as being the recognized treaty line.

The proposition to adopt this new line was made by Lord Ashburton to Mr. Webster in his letter dated June 21, 1842, in which he proposes, "without at all doubting the accuracy" of Major Graham's line, to adopt the "exploring line," as being better established and recognized. And to this proposition of the British minister Mr. Webster assented, notwithstanding the Maine commissioners remonstrated against it, in a letter addressed to Mr. Webster, dated July 16, 1842, in which they inform him that the proposed line would "cut off a portion of the grants made long before by Massachusetts; that it was well known not to be the true line; and that it would take from Maine a strip of territory nearly a mile wide where it crosses the St. John's, and diminishing in width until it came to a point at the monument. The quantity of land lost to individual proprietors by this change in the line is represented to be about ten thousand acres, for which indemnity is asked.

Diagrams of the towns portions of which were thus cut off, with affidavits of surveyors of the number of acres lost, with some other testimony in relation thereto, has been exhibited, and are submitted with the papers in these cases.

All of which is respectfully submitted.

N. C. TOWLE,
Agent, &c.

TESTIMONY IN RELATION TO THE POSSESSORY CLAIMS.

Statement of David O. Parks.

I, David O. Parks, of Eaton grant, of lawful age, depose and say: That I came on to the grant in 1826, then in the sixteenth year of my age. The lot now occupied by Abel Humphrey was then improved by my brother Moses. He had made a chopping on it of about an acre. He lived with my father. He was drowned the next year. It was called afterwards the Parks claim, and we considered it as belonging to the family. It was in consequence of our claim that nobody took possession of it. I left home in 1835. In 1838 I found Abel Humphrey in possession of it. My brother left no family of his own.

Question by Dr. Towle. What is the present value of the improvements on the Abel Humphrey lot?

Answer. About three hundred dollars.

Question by same. What was the value of those improvements in 1842?

Answer. I think the improvements then were not as valuable as at the present time.

In 1842, on the half of the Lawrence Kelly lot, bought by Stephen Sands, there was a clearing of six acres, and a log house on one part; and a clearing of ten acres and a log house on the other part. The houses were new, and worth about forty dollars each.

When I left home, in 1835, the lots now occupied by John Murphy and William Upton were occupied by Thomas Ellenwood. He had a wife and lived on them, and was taking off crops.

The clearing and possession of Mr. House was made before I left home in 1835, and has been kept up to this time since 1838.

In 1838, when I returned home, Patrick Finland was living on the lot he now occupies. That possession was occupied when I left home, and was one of the oldest possessions on the grant.

At the time of the treaty, on the lot now occupied by Patrick Finland, there were eight acres, or more, cleared, and a log house and barn.

DAVID O. PARKS.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me, this 15th September, 1856.

N. C. TOWLE,
Agent United States Senate to take proof, &c.

Statement of Charles Buber.

I, Charles Buber, of letter H., testify and say: That in 1828 I and my brother David settled on adjoining lots in Plymouth grant, and continued to occupy till about 1840, when we both sold to John B. Wenig. My lot is now occupied by Joseph B. Fisher. In my sale to Wenig I reserved a half acre for a graveyard. My brother's lot is now occupied by Samuel Deane and George Deane. It has been continuously occupied since my brother sold it. The northerly portion of the lot occupied by Samuel Deane was derived from one White's possession, but the largest portion of it was my brother's possession.

CHARLES ^{his} + BUBER.
mark.

I also depose and say that George Murghussen followed House in the possession and improvement of the House lot.

CHARLES ^{his} × BUBER.
mark.

I also depose and say that more than twenty years ago Antony Keane bought of Nathaniel Churchill, for ten pounds, a possession which includes the lot now occupied by Patrick Finland, to whom Keane sold.

CHARLES ^{his} + BUBER.
mark.

STATE OF MAINE, }
Aroostook. } ss.

Taken and subscribed before me, this 15th day of September, 1856.

N. C. TOWLE,
Agent of United States Senate to take proof, &c.

Isaac Smith's statement.

I, Isaac Smith, of Plymouth grant, depose and say: That my brother-in-law, George Redicker, bought of William Everett a part of the House possession, and sold the same to Richard Jordan.

In 1844 I purchased of William Everett the lot I now occupy, which then included a lot I sold in 1853 to Samuel Sands. This was a part of a possession of Daniel Turner, which is one of the oldest possessions on the grant. The part I sold to Samuel Sands was as old a possession as the part I retained. Last summer I repurchased of him. In the report of the Maine commissioners the part I retained is set down as possessed six years before the treaty, but the Sands' part is put down as a later possession. This is a mistake.

ISAAC SMITH.

STATE OF MAINE, }
Aroostook. } ss.

Taken and subscribed before me, this 15th day of September, 1856.

N. C. TOWLE,
Agent United States Senate, &c.

Memorandum.—Richard Jordan produced a deed from George Redicker.

I, John Murphy, of Plymouth grant, depose and say: That the House possession in 1842 was occupied by George Murghesson, a Scotchman. He was my next neighbor. He then had a clearing of about twelve acres, and a house and barn. When he moved away, about nine years ago, he sold what he retained of the possession to Cornelius Gambeen. I have heard that he had before sold a part to William Everett. Gambeen sold to Hiram Hall, who sold to William Haley, who has since sold to John Buber.

his
 JOHN + MURPHY.
 mark.

STATE OF MAINE, }
Aroostook. } ss.

Taken and subscribed before me this 15th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proofs, &c.

Mem.—Mr. John Buber exhibited a deed in due form from William Haley of lot 21, as described in report of Maine commissioners.

Statement of Patrick Conley.

I, Patrick Conley, of Eaton grant, of lawful age, depose and say : That I sold a possession six years ago to Edward and James Doyle, for six hundred and fifty dollars. The improvement was worth at least as much in 1842. I came on to the grant about the year 1830. There were then only two or three settlers. There had been no cutting of timber except the winter before I came. The timber then cut was on the brow of the river. After I came, there was a good deal of cutting by people from New Brunswick.

his
PATRICK X CONLEY.
mark

GEO. M. WESTON, witness to the signature of Patrick Conley.

STATE OF MAINE, *Arroostook, ss.*

Taken and subscribed before me, this 13th September, 1856.

N. C. TOWLE,

Agent U. S. Senate to take proof, &c.



Statement of James Doyle.

I, James Doyle, of letter H. plantation, in the State of Maine, of lawful age, depose and say : That in company with my brother Edward, I purchased in 1850 the possession of forty-three and three-quarters acres, in the Eaton grant, of Patrick Conley, for six hundred and fifty dollars. The possessions in that quarter will not sell for so much money as when I purchased, and were not so high in price when I purchased as they were ten years before.

The settlers and occupants on the Eaton and Plymouth grants, in consequence of the doubts and uncertainty as to obtaining their titles under the treaty of Washington, have not increased their improvements since 1842, but they have, in fact, become less valuable, by the decay of buildings and the wearing out of clearings.

JAMES DOYLE.

ARROOSTOOK, ss.

SEPTEMBER 13, 1856.

Personally appeared James Doyle, and made oath that the above statement by him subscribed is true.

Before me :

N. C. TOWLE.

Agent U. S. Senate, authorized to take proof in certain cases.

Statement of James Walton.

I, James Walton, of Eaton grant, of lawful age, depose and say : That my deed from my stepfather, Stephen Sands, of about one-half

of the possession which he purchased of Lawrence Kelley, was burnt up when my house was burned, which is the reason I am not able to produce it. I have been in possession under the deed fourteen or fifteen years.

his
JAMES + WALTON.
mark.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of Patrick Kelley.

I, Patrick Kelley, of Eaton grant, of lawful age, depose and say: That my brother, Lawrence Kelley, sold about half of his original possession to Stephen Sands, who sold a part of it to his stepson, James Walton, and another part to Cornelius Gampeen, who afterwards sold to James Walton. The half sold by my brother to Sands had been occupied and claimed by him as long as the half which he retained.

his
PATRICK + KELLEY.
mark.

I know the facts above stated by Patrick Kelley to be true.

WILLIAM BUBER.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me, this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of John Noland.

I, John Noland, of Plymouth grant, depose and say that I sold to Patrick Finland the lot he afterwards sold to John Murphy and James Shay. I was in possession of it about one year. I bought of Antony Keane, who had been in possession fully five or six years before I bought. I am one of the first settlers on the river, and lived at that time about three miles below the lot. I do not know how long Patrick Finland kept the lot before he sold to Murphy and Shay.

his
JOHN + NOLAND.
mark.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me, this 15th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of John Murphy.

I, John Murphy, of Plymouth grant, depose and say: That I bought the possession of the lot I now occupy of Patrick Finland a short time, not more than a year, before the treaty. Patrick Finland was then in possession. On my lot, in 1842, there was no improvement, except a log-house, which I built. I bought, with James Shay, what had been one lot, of Patrick Finland. In dividing with Shay, I took the part on which there was no improvement. The part falling to James Shay in the division, is now occupied by William Upton. On this part, at that time, there were about four acres under grass, six other acres felled, and no buildings of value.

JOHN MURPHY.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me, this fifteenth day of September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of Patrick Conley.

I, Patrick Conley, of Eaton grant, of lawful age, depose, and say: That the possession of Frank Gallahar, afterwards purchased by Dennis Hale, was commenced four or five years after my settlement on the grant, which was made in December, 1829, as I am now able to fix the date from an examination of my papers. Gallahar did not work on the lot all the time, but claimed it, and it was called his lot. At the time of his sale to Dennis Hale, he was living at the mouth of the Aroostook river.

PATRICK ^{his} + CONLEY.
mark

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me, this thirteenth day of September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of Patrick Kelly.

I, Patrick Kelly, of Eaton grant, of lawful age, depose, and say: That when I settled on the grant there was a possession occupied by Frank Gallahar, afterwards purchased by Dennis Hale. Dennis Hale did not take a deed from Frank Gallahar until about 1840, but had purchased and occupied a considerable time before, although he had not completed his payments. I settled on the grant twenty-one years ago last July.

PATRICK ^{his} + KELLY.
mark

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me, this thirteenth day of September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Testimony of Dennis Hale.

I, Dennis Hale, of Eaton grant, of lawful age, depose and say: That in the year following the Aroostook war—I mean in the spring after the winter of that war—I bought Francis Gallahar's possession on said grant, and moved on to it. I paid him twenty-five dollars for it. He was then living with his wife's friends at the mouth of the Aroostook river. His possession appeared to be six or eight years old when I bought it. It was called Gallahar's improvement in the neighborhood. The Gallahar possession covered the lot now occupied by me, the lot occupied by my son Elisha Hale, and the east half of the lot occupied by James Keagan. My son Elisha derives his title from me directly. James Keagan derives his title from me through my stepson, Hyell Rockwell. I was born in Ireland, and naturalized about seven years ago.

DENNIS ^{his} × HALE.
mark.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me, this 13th September, 1856.

N. C. TOWLE,
Agent United States Senate to take proof, &c.

Statement of James Giggey.

I, James Giggey, of Plymouth grant, of lawful age, depose and say : That the lot on said grant, occupied by Patrick Finland, was occupied twenty-five or twenty-six years ago, when I came to settle on the grant. It was then occupied and improved by Antony Keane, of whom Patrick Finland purchased the possession, about the time of the Aroostook war. Antony Keane continued to crop and occupy the lot until he sold out to Patrick Finland. Antony Keane and Patrick Finland are both Irish born.

his
JAMES X GIGGEY.
mark.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me, this 13th September, 1856.

N. C. TOWLE,
Agent United States Senate to take proof, &c.

Statement of Abel Humphrey.

I, Abel Humphrey, of Eaton grant, of lawful age, depose and say : That in 1838 I moved on to the Moses Parks' possession. I consulted the Parks family, and was assisted in settling by George Parks, a brother of Moses. The father of Moses was an old man, and transacted little or no business. The mother of Moses principally managed the affairs of the family. I asked, and obtained, her permission to go on to the lot.

In 1842, the clearing on the Dennis Hale lot was about fifteen acres; on the Elisha Hale lot about six acres. They both had log houses and barns.

his
ABEL X HUMPHREY.
mark.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me, this 15th of September, 1856.

N. C. TOWLE,
Agent United States Senate to take proof, &c.

Copy of Resolve of Maine of August 9, 1849.

RESOLVE in favor of certain settlers upon the public lands.

Resolved, That the land agent is hereby authorized to convey a lot of land, not exceeding one hundred and twenty acres, to each of the settlers upon lands of this State, in the territory formerly in dispute between the United States and Great Britain, who has not heretofore received land under the treaty of Washington, whenever he shall produce satisfactory evidence of being actually settled on said lot at the date of the aforesaid treaty; and whenever the land agent of Massachusetts shall be authorized to unite in said conveyance, he is further empowered to join said agent in the execution of deeds to all persons producing satisfactory evidence of having been settled as aforesaid on the joint lands of the States of Maine and Massachusetts.

TESTIMONY IN RELATION TO THE LOSS OF TIMBER.

Testimony of George Grantham.

I, George Grantham, of Presque Isle, of lawful age, depose and say: That I came on to the Aroostook river in 1834, and settled on a lot in township G, about a mile above the Eaton line. After living there two years, I moved further up the river to township 13, in the 4th, where I lived ten years. My travel was up and down the river in boats to obtain my supplies, &c. I averaged making the journey twelve times in a year. In the winter I travelled on the ice on the river. In the winter of 1834-5, there was a large operation on the Plymouth and Eaton grants by the two brothers Brown, who lived then and live now between the mouths of the Aroostook and Tobique. The following year there was a large operation by Thomas Sutherland, a province man, then residing on the Plymouth grant. Sutherland cut two years. I recollect, among other operators, one Wolverton, who cut on the Little Madawaska, who then lived on the St. John; the Burselys, province men, now living at the Grand Falls; the Rogerses, of Woodstock, and Hallingwood Murphy (in 1834-5), then living on the St. John's river. There were heavy operations every year until the posse came on in the winter of 1838-9, and some operations then going on were broken up by the posse. During all this time the jurisdiction on the Aroostook river was wholly exercised by the province authorities. McLaughlin, the British warden, collected a duty of eight shillings, province money, per ton on all timber cut on the Aroostook. He was up the river two or three times every year, taking an account of the cuttings, and the province merchants who supplied the operations gave bonds to be responsible for the duty. He always forbid the cuttings, but the understanding was that he did so only as a matter of form, and, in fact, if the duty was paid, there

was no opposition to the cuttings, or to the sale of the timber in the province. No jurisdiction was asserted by Maine until 1839, and no claims interposed by or on behalf of United States proprietors.

I have been a practical lumberman in this region since 1819. I have been over the Eaton and Plymouth grants. In my judgment, they would have cut, in a state of nature, one ton of large merchantable pine and one thousand feet board measure of logs to the acre.

From 1834 to 1839, the stumpage we paid on the river was one dollar and sixty cents per ton, being the eight shillings (province currency) which we paid to the British warden as a duty.

In the winter of 1832-3 I cut on the St. Francis, and in the spring of 1833 I paid this duty to the agent of McLaughlin. It was understood in the county that after the Dutch award was rejected, some arrangement was made by which the province authorities were authorized to collect this duty.

Question by Dr. Towle.—How much timber had been cut on Eaton and Plymouth before you came on to the Aroostook?

Answer.—Not much. The settlements had been just commenced on the river. There were on it at that time only three horses, and very few oxen. It was about this time that the timber began to fail on the Tobique, and attention began to be turned to the Aroostook.

If there had been no interference by the British authorities in collecting duty the cuttings would have been larger.

Question by Dr. Towle.—What assertion (if any) of private ownership over the Eaton and Plymouth was made prior to 1839?

Answer.—In 1835 a Mr. Spear, of Boston, came on and stopped at my house, claiming to represent the owners. I understood that he took down the names of the settlers.

Question by Dr. Towle.—Did the lumbermen cut lumber wherever they found it, without regard to ownership?

Answer.—They did. The only obstruction was the duty collected by the British authorities.

Question by Dr. Towle.—How much timber was taken from those grants from 1834 to 1839?

Answer.—A great deal, but I cannot tell how much. The operations of 1834 and 1835 and 1836 took off the cream of the timber. Not much of the log timber had been taken in 1839. In my judgment two-thirds of the ton timber had then been taken off.

GEORGE GRANTHAM.

STATE OF MAINE, Aroostook, ss.

Taken and subscribed before me this seventeenth day of September, 1856.

N. C. TOWLE,
Agent U. S. Senate, &c.

Statement of Stephen B. Pattee.

I, Stephen B. Pattee, of Section D, (Fort Fairfield,) of lawful age, depose and say: That I went on to the Aroostook river in January, 1839, with the civil posse, and remained about fifteen months. I commenced the erection of my mills at Fort Fairfield in 1842, and have lived there since. In 1854, in company with Mr. Whidden, under commission from the State of Maine, I appraised the value of certain settlers' improvements on the Eaton and Plymouth grants. The third commissioner, Mr. Hutchinson, was not present at the appraisalment, but concurred in it subsequently. Our appraisalment was based upon a personal examination of the lots, and included improvements of land as well as buildings. We found, as a general rule, that our appraisements agreed with the values of the improvements, as estimated in the neighborhood.

These improvements, with a few exceptions, have not been increased since my residence at Fort Fairfield, the settlers being discouraged by the condition of their titles.

Farms in my vicinity, and generally through Aroostook county, have depreciated in price since the period of say five years after the Aroostook war. There was then a disposition to emigrate into the county, and farms could be readily sold for cash. Since about 1845, the tendency has been to emigrate to the western States, and the selling price of our agricultural property has depreciated about one third.

In 1842 the selling price of State settling lands was one dollar per acre. At that time, if the proprietors of the Eaton and Plymouth grants had compromised with the settlers at two dollars per acre for the original value of the soil, independent of the timber which had been taken off, and independent of the improvements, it would have been a fair adjustment. This would have been a double price, in consequence of the settlers having taken the lots fronting on the river. In 1839 the pine timber had been mostly taken from both the Eaton and Plymouth grants. They were originally well timbered with pine. That timber, if now standing, could be sold for one half of the proceeds of the sale of it delivered at St. John. The average price of timber of that character at St. John during the last four years has been about nine dollars per ton.

When I went on in 1839 with the civil posse, we found trespassing actually going on upon both the Eaton and Plymouth grants. The principal trespasser was Plummer, who had got out from Plymouth about fifteen hundred tons.

In 1854 and 1855 I was a member of the House of Representatives of Maine. In 1849 I was appointed deputy collector and inspector at Fort Fairfield by the United States collector at Passamaquoddy.

From 1839 to 1842, pine timber which would now sell at St. John at nine dollars per ton would have sold at about six dollars per ton. [This was an answer to question by Dr. Towle.]

Question by Dr. Towle.—What would have been a fair and just

price for the settlers to have paid the proprietors in 1842, in order to have obtained a fee-simple title to their possessions?

Answer.—Two dollars per acre.

Question by Dr. Towle.—Do you think that the value of the improvements has increased, or otherwise, since 1842?

Answer.—It has not increased. The choppings have been enlarged, but the former clearings have been neglected, and are depreciated.

Question by Dr. Towle.—Did the sums given in your report as the value of the improvements include the value of the soil?

Answer.—They did not.

Question by Dr. Towle.—Upon what principles did you make your appraisal of improvements?

Answer.—We appraised them at the rates at which similar improvements were bought and sold in that vicinity. We made a particular examination of the buildings and clearings in each case.

Question by Dr. Towle.—How would the value of the improvements commenced prior to 1842, but not as early as 1836, compare per acre with the value of the improvements commenced as early as 1836?

Answer.—It would be about the same.

Question by Dr. Towle.—Are the lots fronting on the river generally rated at double the value of back lots?

Answer.—They are. The location is better, and the intervals on the river are considered our richest lands. I own myself seventy-five acres on the Aroostook river, in letter D, which I would not sell at less than twenty-five dollars per acre.

STEPHEN B. PATTEE.

STATE OF MAINE, *Aroostook, ss.*

Sworn and subscribed before me this 17th day of September, 1856.

N. C. TOWLE,

Agent U. S. Senate to take and receive proof, &c.

Statement of John McCluskey.

I, John McCluskey, of Houlton, of lawful age, depose and say: That I have resided at Houlton since 1840, and have been engaged in lumbering on the Aroostook and St. John's. From one third to one half of all the lumber cut on the Aroostook is cut by me. I have stores at Fort Fairfield and Presque Isle. I have paid the past winter as high as ten dollars per 1,000 feet board measure stumpage for pine. A ton is equal to four hundred and eighty feet. I am acquainted with the Plymouth grant, and better acquainted with the Eaton grant. From the appearance of the stumps they must have been well timbered with pine. The pine was as large as any of the Aroostook pine,

which is the largest pine on the St. John's waters. I think the Eaton grant, in a state of nature, would cut two thousand feet board measure of pine to the acre. I first knew the Eaton grant in 1842 or 1843. It was then pretty thoroughly stripped of its pine.

Having driven lumber several years out of the Little Madawaska, I know that there is a good and valuable mill privilege about twenty rods from its entrance into the Aroostook river in the Eaton grant. It is as good a privilege as there is on the Aroostook river.

There is a road running from Fort Fairfield up the Aroostook river, on the south bank, called the Carriban road. It runs nine miles through the Plymouth and Eaton grants. One road was built in 1850, at a cost of four thousand dollars. James A. Drew built it. The cost was assessed on the proprietors of Plymouth and Eaton. The road runs through the lots fronting on the river.

Question by Dr. Towle.—How long have you lumbered on the Aroostook river?

Answer.—Ten years successively.

Question by Dr. Towle.—How much has stumpage risen within that time?

Answer.—It has risen about fifty per cent. within that time, and from the information I have I believe that it has certainly doubled within twenty years. In the winter of 1847-'48 I bought stumpage of the State on Fish river at an average of three dollars per 1,000 feet, board measure. In 1851 or 1852 I bought about six hundred and forty acres of one Ormsby in township H, three miles from the river, at three dollars per acre. The State has always permitted at lower rates than private proprietors. The year previous to my operations on the Fish river above alluded to, I paid the State on the same place two dollars and fifty cents per ton, which is equal to more than five dollars per 1,000 feet, board measure.

JOHN McCLUSKEY.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me this 17th September, 1856.

N. C. TOWLE,

Agent U. S. Senate to take proof, &c.

Statement of Charles Buber.

I, Charles Buber, of letter H, depose and say: That I knew about the lumbering of Hopkins on the Eaton grant, about twenty-one years ago. I do not know the quantity, but my recollection is that he got as much as four hundred tons. The winter before, Chandler and Hooper operated on the Eaton, and got off not less than six or seven hundred tons. One of their logging roads is called the "Chandler road" to this day. In 1832 or 1833, Mr. Brown got about three hundred tons from the Plymouth, and hauled it to a brow opposite my

house. Mr. Brown lived at the mouth of the river. The next year Hopkins and Parker hauled out to the same place about five hundred tons. The next year, Thomas Sutherland hauled out at the same place about two hundred and fifty tons. I also recollect that Benjamin Gardiner made an operation about the same time. I recollect these instances of cutting, because their landings were near my place. The Plymouth was better timbered than the Eaton.

CHARLES ^{his} + BUBER.
mark.

STATE OF MAINE, *Aroostook, ss.*

Sworn and subscribed before me this 15th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement by Michael Keane.

I, Michael Keane, of Eaton grant, in the State of Maine, depose and say: That I am sixty-one years of age; was born in Ireland, and came on to the Aroostook river in 1831, by the way of New Brunswick, and settled on the Eaton grant, where I have lived ever since. I was never naturalized as a citizen of the United States. In 1831 there were about twenty families on the Aroostook river. On the Eaton grant, Patrick Conley, and Lawrence Kelley, and Jonathan Parks, and Daniel O. Parks, were living when I came, having come in three years before. When I first knew the grant but very little pine timber had been cut off, and there were large amounts standing. The cuttings, when I came on, were confined to a few lots on the river. From 1831 to the time of the Aroostook war the quantity of pine cut was large, say eight thousand tons—perhaps more, perhaps not so much. The quality was the best in this region. At the time of the Aroostook war the grant had been pretty much stripped of its pine.

The improvements on the Eaton grant, on the old improved lots, have not increased, but the contrary, within the past fifteen years, the settlers being troubled and discouraged about their titles.

MICHAEL KEANE.

AROOSTOOK, ss.

SEPTEMBER 13, 1856.

Personally appeared Michael Keane, and made oath that the foregoing statement by him subscribed is true, according to the best of his knowledge and belief.

Before me,

N. C. TOWLE,
Agent U. S. Senate, authorized to take proof in certain cases.

Statement of Patrick Kelley.

I, Patrick Kelley, of Eaton grant, of lawful age, depose and say: That I bought a possession and settled on the grant twenty-one years ago last July. The winter before I settled there had been a large lumbering operation on the grant, supplied by Mr. Tibbats, of Tobique, New Brunswick. From that time, down to the Aroostook war, there was a great deal of cutting by the province people, by the settlers, and others. There were operations going on at the time of the war, which were broken up at that time. I cut, myself, with others. We did not know under whose government the territory would fall. From the appearance of the standing timber, and of the stumps, when I settled here, the Eaton grant and the Plymouth grant had been well timbered. Before I came, permits to cut timber on them had been given by the authorities of New Brunswick. We never heard of any claims of United States proprietors until after the Aroostook war. On the old improvements but little has been done of late years, on account of the uncertainty of getting our titles under the treaty of Washington.

PATRICK ^{his} + KELLEY.
mark.

GEORGE M. WESTON,
Witness to the signature of Patrick Kelley.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me the 13th of September, 1856.
N. C. TOWLE,
Agent, &c.

Statement of William Buber.

I, William Buber, of Eaton grant, of lawful age, depose and say: That I have lived on said grant since July, 1839. I first came on to the Aroostook river in 1827. There were then two or three families on the grant. The forests were untouched, and there were large amounts of spruce and pine timber standing on the shores. In 1839, this timber had been mostly stripped off from the front and back lots.

On the old improved lots on the Eaton and Plymouth grants but little has been done during the last fifteen years, on account of the disputed title. Drew and Mansur, and other proprietors, have claimed it, and we have had no heart to do much. We have talked it over among ourselves, and concluded it was not safe to lay out much, until our rights were settled under the treaty of Washington.

WM. BUBER.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me this 17th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proofs, &c.

Statement of Lawrence Kelley.

I, Lawrence Kelley, of Eaton grant, of lawful age, depose and say: That I knew of the commencement of Francis Gallahar's possession. He took off two crops. He then lived at Patrick Conley's house. I heard of his sale to Dennis Hale, perhaps eight years after the commencement of his possession. The possession was always called Gallahar's possession, and he was understood and recognized as the owner.

Of my own possession, I sold the up-river half to Stephen Sands. I had occupied and improved the part I sold to Sands as fully as the part I retained. He paid me a cow, reckoned at that time at forty dollars.

The improvements on the old possessions on the Eaton and Plymouth grants have gained little, if any, during the past fifteen years, the settlers being discouraged by the uncertainty of their titles.

I settled on the Eaton grant about twenty-seven years ago. There was then a large amount of pine timber on both Eaton and Plymouth. The front ridges on the river were then covered with pine. It was cut off every year from that time to the time of the Aroostook war by settlers and people from the province. Mr. Tibbatts, Mr. Hopkins, Abraham Hammond, and Mr. Giverson, of Tobique, I recollect as operating. Mr. Tibbatts was the largest operator. He furnished the settlers with supplies to operate with, and bought all the settlers would haul to the banks of the river. No opposition was offered to those operations by American proprietors. The only person who asserted any right of control over the premises was Mr. McLaughlin, the British warden of the disputed territory. After the Aroostook war these operations were broken up. During the winter of that war Mr. Plummer was operating on Plymouth with twelve horses. His teams were broken up by the civil posse of Maine. At the time of the Aroostook war Eaton and Plymouth were pretty thoroughly stripped.

LAWRENCE ^{his} + KELLEY.
mark.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,
Agent U. S. Senate to take proof, &c.

Statement of David O. Parks.

I, David O. Parks, of Eaton grant, depose and say : That in May or June, 1835, I was employed by three gentlemen to explore the grant for timber. I do not recollect their names, but my impression is that they lived in the western part of Maine. I spent two days with them, cruising through the timber. Our judgment was that the pine timber suitable for ton timber would average about a quarter of a ton per acre. We estimated no pine except for ton timber. There had been a good deal cut off before. When I returned home in 1838, this timber had been principally removed. The Plymouth grant was much better timbered with pine than the Eaton grant. We estimated on the Eaton that the timber standing, if sound, would average half a ton per acre. We made an allowance of one half for rots.

DAVID O. PARKS.

STATE OF MAINE, *Aroostook, ss.*

Sworn and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,

Agent United States Senate to take proof, &c.

Statement of Elijah L. Hamlin.

I, Elijah L. Hamlin, of Bangor, of lawful age, depose and say: That in the year 1838 I was land agent of Maine. In the spring of that year I sent Colonel Eben Webster to report upon the trespassing upon the Aroostook and St. John rivers. In the fall I visited the Aroostook river myself, and when I returned left an agent (Mr. Buckmore) to look after the interests of the State. The reports of Colonel Webster and Mr. Buckmore have been published. I saw myself operations in timber going on at various points as I passed down the Aroostook river, and particularly upon the Plymouth township. Prior to 1838 the jurisdiction of the State had not been exercised for some time as far north as the Aroostook, and was then resisted by Mr. McLaughlin, calling himself the British warden of the disputed territory, on the ground that, by an arrangement between the governments of the United States and Great Britain, that region was to remain under the control of New Brunswick until the boundary dispute was settled. In the winter of 1839, however, the jurisdiction of the State against trespassers was maintained by civil and military force.

In the summer of 1842 I was three months at Fort Fairfield. My principal object in remaining there was to ascertain, by examination and inquiry, the condition of the lands and timber upon the Aroostook river, with a view to purchases. With the exception of remote tracts of land, I found that very little valuable timber was left. Of

the Plymouth township, which adjoins the township in which Fort Fairfield is situated, I made a particular examination, at the request of Frederick Hobbs, esq., who was the agent and attorney of parties interested in the ownership. I reported to Mr. Hobbs the condition of the township and my opinion of its value. I found the township substantially stripped of its pine timber, and the accessible lots on the river in possession of squatters. Under the circumstances, I advised Mr. Hobbs that his clients would do better to abandon the township than to pay taxes upon it.

ELIJAH L. HAMLIN.

STATE OF MAINE, *Penobscot, ss.*

October 17, 1856, personally appeared Elijah L. Hamlin, and made oath that the foregoing statement by him signed contains the truth, according to his best knowledge and belief.

Before me,

THOMAS N. GUMSEY,

Justice of the Peace.

Statement of David O. Parks.

I, David O. Parks, of Eaton grant, of lawful age, depose and says: That two, three, or four years before the Aroostook war, Daniel Hopkins, of Andover, New Brunswick, made a lumbering operation on the Eaton grant, and took off, according to my best recollection, six hundred tons of pine timber.

DAVID O. PARKS.

STATE OF MAINE, *Aroostook, ss.*

Taken and subscribed before me this 13th September, 1856.

N. C. TOWLE,

Agent United States Senate to take proof, &c.

Statement of James Rogers.

I, James Rogers, of Plymouth grant, of lawful age, depose and say: That I have lived on the grant about twenty-three years. When I first came there was a large amount of pine, of good quality, on the Eaton and Plymouth grants. At the time of the Aroostook war the greater part had been taken off. The operations were supplied chiefly by the province people. The British squadron had officers to look after it and collect a province duty of eight shillings per ton. Before the Aroostook war there was no claim asserted of any United States proprietors to my knowledge.

In reference to my possession, I have not been inclined to increase my improvements from the uncertainty of obtaining title under the

treaty of Washington; and I believe that others have been restrained from improvements from the same consideration; but, notwithstanding this, it is my judgment that the improvements have been increased since 1842.

JAMES ROGERS.

I also state, I knew of the commencement of Mr. House's possession, now occupied by Richard Jordon and John Buber, who bought of William Haley. The possession was commenced, I think, as early as 1834. I believe it has been improved ever since.

In 1842, to the best of my recollection, there was on this possession a clearing of as much as eight acres, and a log house and barn.

JAMES ROGERS.

STATE OF MAINE, *Aroostook, ss.*

Sworn and subscribed before me this 15th day of September, 1856.

N. C. TOWLE,

Agent United States Senate to take proof, &c.

MEMORIAL OF GEORGE M. WESTON.

To the Senate and House of Representatives of the United States of America:

This memorial of George M. Weston, commissioner from Maine, to present the claims of that State under the fourth article of the treaty of Washington, respectfully represents:

The fourth article of the treaty of Washington, concluded between the United States and Great Britain on the 9th of August, 1842, was in the following words:

"All grants of land heretofore made by either party, within the limits of the territory which by this treaty falls within the dominions of the other party, shall be held valid, ratified and confirmed to the persons in possession under such grants, to the same extent as if such territory had by this treaty fallen within the dominions of the party by whom such grants were made; and all equitable possessory claims arising from a possession and improvement of any lot or parcel of land by the person actually in possession, or by those under whom such person claims, for more than six years before the date of this treaty, shall, in like manner, be deemed valid, and be confirmed and quieted by a release to the person entitled thereto, of the title to such lot or parcel of land, so described as best to include the improvements made thereon; and in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the territory falling to them, respectively, which has heretofore been in dispute between them."

The territory which had been involved in the dispute between the United States and Great Britain, which was adjusted by the treaty of

Washington, embraced nine millions of acres, or about one-third of the area of Maine. It was inaccessible by roads, and had been substantially taken out of the jurisdiction of Maine by the arrangement entered into in 1832, between the British minister at Washington, and the Secretary of State for the United States. Its condition in respect to occupation and settlements was imperfectly understood. Attention appears to have been principally attracted to the French settlement on the river St. John, commonly known as the Madawaska settlement, which embraced a large number of people, and was ancient and well known. In 1843, the government of Maine, in conjunction with the government of Massachusetts, instituted a commission to ascertain and define the limits of lots, in the enjoyment of which settlers and holders of grants were entitled to be quieted by the provisions of the fourth article of the treaty of Washington. This commission was soon terminated, and its labors seem to have been mainly confined to the Madawaska settlement above referred to.

On the report of this commission, deeds of conveyance were executed to the parties entitled, by the land agents of Maine and Massachusetts. It did not then seem to be understood that the treaty operated, *proprio vigore*, to give title to the holders of grants and settlers coming within the provisions of the fourth article. On the contrary, that article appears to have been treated merely as a contract and agreement, to be subsequently executed and carried out by the parties bound by it.

It appears, also, from the report of this commission, to have been the impression of the gentlemen who composed it, that their duties were confined to quieting the holders of British grants and settlers upon the public domain of Maine and Massachusetts, and they instituted no inquiries into the rights of such grantees and settlers upon lands belonging to individual proprietors.

Although the treaty, if in truth any action was necessary to carry it out, was obligatory, not upon Maine or Massachusetts, but upon the United States, the government of the United States has not seen fit, or found it necessary, to take any measures in the premises. In the analogous cases of Florida and Louisiana, where, under the treaties by which those territories were acquired from foreign powers, certain prior rights in lands were secured to individuals, Congress has thought proper to make these rights more available, by instituting commissions, or by conferring special power upon existing tribunals. In reference to the treaty of Washington, it seems to have been left to Maine as the local sovereign, and to Maine and Massachusetts as the proprietors of the great bulk of the lands affected by it, to adopt such measures as were required by the national faith, and by the repose and quiet of the country. All which the government of the United States has ever done, has been to sanction and ratify the agency thus naturally and properly assumed by Maine and Massachusetts.

The expenses of the commission instituted by those States in 1843 were audited and paid by the treasury of the United States, the proper officers adopting the views hereinbefore given.

It very soon became manifest that the attention of that commission

had not been called to numerous cases falling within the scope of its duties and powers, even upon the narrowest construction of them. This will not appear surprising, when the great extent of the territory concerned—larger, indeed, than the whole State of Massachusetts—the entire absence of roads, the want of knowledge of their rights on the part of the settlers, and the shortness of the period during which the commission was in existence, are taken into account.

In the case of *Little vs. Watson*, adjudicated by the supreme court of Maine, and in which the decision was published in 1852, it was held,

First, That the treaty of Washington operated to give title by its own force to the holders of British grants coming within the fourth article; and

Secondly, That it gave title as well against private proprietors as against Maine and Massachusetts. The elaborate opinion of Chief Justice Shepley, announcing these results, will be found in the 32d volume of the Maine Reports, page 214. It is based, so far as authority is concerned, upon the similar case of *United States vs. Pencherman*, arising in Florida, and in which the decision of the Supreme Court of the United States, as pronounced by Chief Justice Marshall, may be found in Peters vii, 51.

Chief Justice Shepley says:

“The treaty of Washington, which provides that grants of land ‘shall be held valid, ratified, and confirmed,’ does not contemplate any future act as necessary to the validity, ratification, or confirmation of the grant. They are held to be so by those whose duty it may be to act upon them. The language addresses even more appropriately the judicial than the legislative department. It is the duty of the court to consider that treaty to be a law operating upon the grant, made under the authority of the British government, and declaring that it shall be held valid, ratified, and confirmed.

“It is further insisted, that it cannot be permitted so to operate and thereby defeat the title of the demandant to the land, without a violation of that provision of the constitution of the United States which declares that private property shall not be taken for public use, without just compensation. It is not in the argument denied that public or private property may be sacrificed by treaty; but it is said that such a provision of a treaty as would take private property, without compensation, must remain inoperative, or suspended, until compensation has been made.

“Such a construction would infringe upon the treaty-making power, and make its acts depend for their validity upon the will of the legislative department, while the constitution provides that treaties shall be the supreme law.

“The clause of the constitution referred to, is a restriction imposed upon the legislative department, in its exercise of the right of eminent domain. It must, of necessity, have reference to that department which has the power to make compensation, and not to the treaty-making power, which cannot do it. This provision of the constitution will not prevent the operation of the treaty, upon the grant of the tenant. *Ware vs. Hilton*, 3 Dallas 236; *United States vs. Schooner*

Peggy, 1 *Cranch*, 110. The demandant must seek compensation for the loss of his land from the justice of his country."

The principle of the decision in *Little vs. Watson* unquestionably applies to the case of possessory claims arising more than six years before the date of the treaty. Such claims are to be "deemed" valid, while grants are to be "held" valid; the import of the two words being identically the same, and both of them addressing themselves, in the language of Chief Justice Shepley, rather to "the judicial than the legislative department." It is true that, from the nature of the case, something is to be done in reference to possessory claims which is not required in reference to grants, viz: that an exact demarcation and description of limits is to be made. But when such description is made by competent authority, no matter when made, it has relation back to the date of the treaty; at which time, by force of the treaty itself, if the decision in *Little vs. Watson* is correct, the possessory claim was converted into an indefeasible title against former owners, whether public or private. A release would be an instrument in which such a description might be appropriately imbodyed, and so would be a desirable and valuable evidence and muniment of title, but would not itself constitute the title, which would be perfect without it.

In a case arising between a proprietor and the holder of a possessory claim under the treaty, at a *nisi prius* term of the supreme court of Maine, holden during the last year in Aroostook county, the principle of the decision in *Little vs. Watson* was unhesitatingly applied.

If the treaty is merely a contract to be executed, it would be the duty of the government of the United States to obtain by purchase the title of private proprietors, where it is under obligation to secure a title to settlers and holders of British grants. But inasmuch as the treaty is enforced by the judicial tribunals as a perfected law, in the matters to which it relates, it seems to be the duty of the government of the United States to make prompt and sufficient indemnity to those whose rights of private property have been forced to yield to overruling considerations of public policy.

In view of the fact that the joint commission instituted by Maine and Massachusetts in 1843 had left unexamined numerous cases falling within the treaty, even under the narrow construction which appears to have been then given to it, and in view also of the more enlarged construction subsequently given to it by the judicial tribunals; the legislature of Maine, on the 12th of April, 1854, instituted a new commission, who reported on the 6th of March, 1855, and a printed copy of whose report accompanies this memorial.

It appears from this report, that upon lands belonging to private proprietors, claims by possession arising more than six years before the date of the treaty have been ascertained to the extent of about seven thousand acres; and also claims, to a less extent, by possession not arising six years before the date of the treaty, and therefore addressing themselves merely to the discretion of the government of the United States, under that clause of the fourth article which provides that "*in all other respects the two contracting parties agree to deal upon the most liberal principles of equity with the settlers actually dwelling upon the*

territory falling to them, respectively, which has heretofore been in dispute between them."

In one view of the case, the government of Maine might leave the individual proprietors, some of whom are not her own citizens, who have been deprived of their property by the treaty of Washington as authoritatively construed by the judicial tribunals, to seek for themselves that redress which they could not fail to receive from the justice of the federal government, from the constitutional exercise of whose power this treaty derives its force. But the government of Maine is itself concerned in the subject-matter, in the interest of the repose and quiet of the territory lately in dispute with Great Britain; and in fact, in that interest, it made the provisions of the fourth article the condition of the most reluctant assent which it gave to the treaty. In that interest, the government of Maine has instructed the undersigned, while prosecuting here its own claims for pecuniary indemnity for lands conveyed, and to be conveyed, under the treaty, to settlers and holders of British grants, to ask the adoption by Congress of some comprehensive measure which shall, with the least possible delay, quiet all questions between proprietors and occupants, in a territory whose growth and development have been so long retarded by the controversy in respect to the northeastern boundary of the United States.

The undersigned is also instructed to ask that the same measure may embrace some provisions for the indemnification of private proprietors for losses of timber under the arrangement of 1832 between the United States and Great Britain, which suspended the jurisdiction of Maine over a portion of the disputed territory, and of those private proprietors whose lands were taken away, by the adoption in the treaty of Washington, as a conventional line, of the exploring line run northerly from the monument at the source of the St. Croix, instead of the due-north line from that point, as established by the treaty of peace of 1783 between the United States and Great Britain.

GEORGE M. WESTON.

WASHINGTON, February 6, 1856.

Letter of George M. Weston to the Hon. Committee on Claims of the U. S. Senate.

I ask the Committee on Claims to consider—

First—What was actually agreed between the governments of the United States and of Great Britain, as to the jurisdiction of the "disputed territory" of Maine?

Second—What the authorities of New Brunswick claimed to have been agreed as above, and what jurisdiction they actually exercised?

Third—To what extent, and how long, Maine did in fact forbear the exertion of her jurisdiction in deference to the wishes of the United States?

Upon the first point, I remark, that the arrangement really entered into at Washington is found in a letter of July 21, 1832, from Mr.

Livingston, Secretary of State of the United States, to the British minister at Washington, in which Mr. Livingston says:

"Until this matter shall be brought to a final conclusion, the necessity of refraining on both sides from any exercise of jurisdiction beyond the boundaries now actually possessed, must be apparent, and will, no doubt, be acquiesced in on the part of his Britannic Majesty's province, *as it will be by the United States.*"

The British minister, Sir Charles R. Vaughan, in his reply, says:

"He is further to assure Mr. Livingston that his Majesty's government entirely concurs with that of the United States in the principle of continuing to abstain, during the progress of the negotiation, from extending the exercise of jurisdiction, within the disputed territory, beyond the limits within which it has been hitherto usually exercised by the authorities of either party."

Upon the second point, I remark, that the authorities of New Brunswick so perverted the before recited agreement, or assumed such a state of facts as to the jurisdiction which had "*been hitherto usually exercised,*" as to claim the exclusive custody of the valleys of the St. John and Aroostook, and they did, in fact, keep out any interfering jurisdiction of Maine until the winter of 1838-9.

These claims of New Brunswick are matters of historical notoriety. They led to the (so-called) Aroostook war of 1839.

In the winter of 1838, Maine directed her surveyor general to survey certain townships on the Aroostook river. This was the first movement towards taking jurisdiction in that quarter which Maine had made. The surveyor general, in discharging this duty, received from James McLaughlan, a British officer, claiming to be the "*warden of the disputed territory,*" a letter, of which the following is a copy:

"Whereas the operations in which you and your party are engaged in surveying land and locating settlers on this river, under the authority of the State of Maine, appears to me to be *a violation of the existing arrangements* subsisting between the British government and that of the United States; and whereas, by my instructions, it is made my duty to protest against any act implying sovereignty or jurisdiction on the part of any government or State, or of citizens or subjects of any government or State, exercised within the territory in dispute between the two governments of Great Britain and the United States, and known by the name of the 'disputed territory,' until the right to that territory shall have been determined by negotiation between the two governments:

"I do hereby, accordingly, in my capacity of warden of said territory, duly approved by the British government, in pursuance of my duty on behalf of her Majesty, protest and warn you forthwith to desist from proceeding further with your proceedings."

On the 13th of February, 1839, Sir John Harvey, governor of New Brunswick, in a letter to the governor of Maine, remonstrating against the sending by the latter of a force to expel trespassers from the Aroostook river, says:

"I have just heard, with the utmost surprise and regret, that without the courtesy of any previous intimation whatever to this govern-

ment, an armed force from the State of Maine has entered the territory, the claim to which is in dispute betwixt Great Britain and the United States, *and which it has been agreed betwixt the two general governments shall remain in the exclusive possession and jurisdiction of England until that claim shall be determined.*"

"It has been my duty, on more than one occasion, to apprise the executive government of Maine that my instructions do not permit me to suffer any interference with that possession and jurisdiction, until the question of jurisdiction shall have been finally decided.

* * * * *

"I do not hesitate in entreating your excellency to relieve me, by ordering the immediate recall of a force, whose presence within the precincts of the territory as claimed by England, it is contrary to my instructions to permit; and it is proper that I should acquaint your excellency that I have directed a strong force of her Majesty's troops to be in readiness to support her Majesty's authority, and protect her Majesty's subjects in the disputed territory, in the event of this request not being immediately complied with."

It thus appears that New Brunswick claimed exclusive possession of the St. John and Aroostook rivers, and that when an attempt at adverse jurisdiction, although confined to the mere purpose of driving off trespassers, was made by Maine in the winter of 1838-9, it was resisted by a threat of the military power of Great Britain.

Upon the third point, I remark, that it is a part of the public history of the country, that Maine forbore actual jurisdiction on the Aroostook river until 1838. In the winter of that year, her legislature directed certain surveys of lands to be made on that river, as before noticed; and during that year her land agent caused investigation to be made as to the extent of the trespassing going on in that quarter.

On the 20th of March, 1838, Col. Ebenezer Webster was appointed by the land agent of Maine to examine the condition of things on the St. John and Aroostook rivers. His report, dated May 7, 1838, is appended to the land agent's annual report of January 1, 1839.

On the 14th of December, 1838, the land agents of Maine and Massachusetts commissioned George W. Buckmore "to proceed to the Aroostook river and see that no trespassing is committed on the townships belonging to Maine and Massachusetts, on that river, the ensuing winter."

His report is dated January 22, 1839, and led to the passage of the resolve of January 24, "That the land agent be, and is hereby, authorized and required to employ sufficient force to arrest, detain, and imprison all persons found trespassing on the territory of this State, as bounded and established by the treaty of 1783."

It abundantly appears that these movements of Maine in that quarter were the first which were made there; and, in the second place, that Maine had forborne until then, in deference to the wishes of the United States.

In his message of January 2, 1839, to the legislature of Maine, Gov. Hunt, referring to the land agent's report of the measures which

had been taken to look up and warn off persons trespassing on the Aroostook river, says :

"It is encouraging and satisfactory that this *first attempt* to interfere directly with such unlawful acts resulted in so great success."

In the same message Governor Hunt says :

"The assumption of a right to exclusive and absolute jurisdiction, by the government of New Brunswick, over the whole territory north of the sources of the Aroostook and St. John rivers, and the establishment of a wardenship over the same, *by the concurrence, as is asserted, of the President of the United States*, and the exercise of authority within the same limits, have been the subject of frequent objection and loud remonstrance on the part of the people of this State."

Hon. Charles S. Davies, of Portland, Maine, who had been appointed a commissioner to this government in reference to the matter of the northeastern boundary, in a report made to Governor Hunt, on the 1st of August, 1838, says :

"Nothing can be more remarkable, in fact, than the weakness of suffering so large a portion of the original domain of this State to pass under the unquestioned control of a mere provincial warden."

The resolves passed by the legislature of Maine, March 23, 1839, authorizing the governor, in a certain contingency, to withdraw the militia from the Aroostook river, although continuing to assert the jurisdiction as against trespassers, assumed by the resolve of the 24th of January of that year, contain the most complete evidence that Maine had heretofore been restrained, and would still consent to be further restrained, by a deference to the arrangements and wishes of the United States government. Those resolves were, in part, as follows :

"*Resolved*, That the right of this State to exclusive jurisdiction over all that territory claimed by Great Britain which lies west of a due-north line from the monument to the northwest angle of Nova Scotia (usually denominated the '*disputed territory*') has been constant and indefeasible since our existence as an independent State ; *and no agreement which has been, or may be, entered into by the government of the Union* can impair her prerogative to be the sole judge of the time when, and the manner in which, that right shall be enforced.

"*Resolved*, That this State, in view of the measures recently adopted by the government of the Union in relation to this question, and particularly the provision made for a special minister to the court of St. James, and actuated by an earnest desire to come to an amicable adjustment of the whole controversy, will forbear to enforce her jurisdiction in that part of her territory, *the possession of which is now usurped by the province of New Brunswick*, so far as she can do so consistently with the maintenance of the resolve of the 24th of January last," &c., &c., &c.

These resolves had relation to the contingent withdrawal of the militia from the Aroostook river ; and they prove, 1st, that possession there had been usurped by New Brunswick ; 2d, that no measures, even to repel trespassers, had been taken by the legislature of Maine

until January 24, 1839; and 3d, that this forbearance, which was still to be continued to a certain extent, was in deference to the arrangements and wishes of the government of the United States.

The township granted to the town of Plymouth, and the half township granted to General Eaton for his valor and patriotic services in our war with the Barbary Powers, both on the Aroostook river and near to the line of New Brunswick, are, I believe, the only tracts of land belonging to private proprietors within the disputed territory, or rather within that part of it from which the jurisdiction of Maine was fully ousted.

The owners of those tracts, during the period of the suspended jurisdiction of Maine, could not enjoy their property, or even protect it; and they suffered great losses of valuable timber in consequence of this condition of things.

Redress for them is asked as a matter of justice, but it is not unsuitable to refer to other considerations.

The half township granted to General Eaton for patriotic services, passed in 1808 into the hands of two gentlemen, as security for a loan of money. On the part of one of those gentlemen, (Judge Stebbins,) this loan is known to have been a friendly act altogether, and there is some reason to believe that the same thing is true of the other gentleman. They are now represented each by an only child and a daughter. One of them, Miss Laura Stebbins, had no inheritance save this interest in the Eaton grant, from which she never realized a single dollar, and is now living in a condition of destitution.

The owners of the Plymouth township during the period when it was put out of the protection of American laws, are citizens of Boston, advanced in years, who paid large sums for this property, and one of them was broken down and bankrupted by his losses in it.

GEORGE M. WESTON.

WASHINGTON, *April* 14, 1856.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1857.—Ordered to be printed.

Mr. FISH made the following

REPORT.

[To accompany bill S. 524]

The Committee on Naval Affairs, to whom were referred the memorial and accompanying papers of Captain Hiram Paulding, United States navy, praying that the proper accounting officers of the treasury may be directed to adjust his accounts and pay him certain sums of money disbursed by him, and specifically set forth in his memorial, have had the same under consideration, and report :

That concurring entirely in the views which were presented of this case by a report from Mr. Mallory, of the Committee on Naval Affairs of the Senate, on the 17th day of January, 1854, they here adopt that report, and again present it, with the same accompanying bill to carry its recommendation into effect. The committee will only add, that this same bill, when then proposed, passed the Senate, and was favorably reported on, without amendment, by the Committee on Foreign Affairs of the House of Representatives, but being committed to the Committee of the Whole House in that body, was not reached, or taken up and acted upon, and so failed to become a law.

IN SENATE, January 17, 1854.

Mr. MALLORY made the following report :

The Committee on Naval Affairs, to whom were referred the memorial and accompanying papers of Captain Hiram Paulding, United States navy, praying that the proper accounting officers of the treasury may be directed to adjust his accounts and pay him certain sums of money disbursed by him, and specifically set forth in his memorial, have had the same under consideration, and report :

Captain Paulding was assigned to the command of the new frigate St. Lawrence, by the Secretary of the Navy, in the year 1848, and ordered upon special and independent service, having reference to the then political difficulties on the continent of Europe. A copy of the Secretary's order is herewith appended. The difficulties in regard to Holstein and Schleswig, and a general revolutionary movement through-

out Germany, and the pending struggle between Austria and Hungary, seemed to call for the presence of a naval force in the northern part of Europe, to which the cruising ground of the Mediterranean squadron could not be extended. Under this order the *St. Lawrence* arrived at Southampton in December, 1848, where she was received as the representative of the United States with distinguished honors by all classes of people. The municipal authorities visited the ship, and presented to Captain Paulding an engrossed resolution, sealed with the seal of the borough of Southampton, passed by them unanimously, inviting the officers to a banquet. Upon the landing of the first boat from the ship, the British flag from the pier-head was lowered and that of the United States hoisted in its place, and every mark of kindness and honorable welcome in their power was exhibited while the ship lay there. It was the first opportunity our naval officers ever had of accepting similar attentions from the authorities or people of Great Britain upon their own soil. Captain Paulding regarded all these demonstrations not as mere idle or personal civilities, but as designed to express towards the government of the United States those kindly feelings and generous sympathies of the people of England which it is manifestly our interest to cultivate, and which he did not feel himself justified to disregard. In return for the civilities thus extended to his flag and officers, Captain Paulding received the visits of the authorities and people of the borough on board the ship, and the expense attending the courtesies thus extended was defrayed by the purser of the ship, as a proper expenditure in behalf of the government under the orders of the memorialist, and amounted to the sum of \$963 92.

The ship next proceeded through the channel to the north sea, to Bremerhaven, the port of Bremen. Here the Arch Duke of Oldenburg, with a numerous suite, in accordance with his previous notification to Captain Paulding, visited the ship, and was received in a manner, and by an entertainment, suitable to his rank; and successively the senate of Bremen, with a numerous suite of from seventy to one hundred, and many of the most distinguished persons of Germany, the Queen of Greece, the Duke of Oldenburg, with his royal family, and Prince Stephen of Austria, the Baron Von Gagern, late president of the imperial parliament of Frankfort, and Duckwitz, minister of the German marine, were received on board and entertained.

In the summer of 1849, deputations from the Prussian government and from the parliament of Frankfort were recommended to Captain Paulding, with reference to the formation of a German navy, and visited the ship, by which expense was also incurred.

The ship thence proceeded to Stockholm. Here Count Platen, king's chamberlain, minister of marine, and the representative of the sovereign authority in the absence of the king, with a numerous suite of distinguished persons, was received on board and entertained.

The aggregate of expenses thus incurred in the entertainment, on board the ship, of these and numerous other visitors, was \$3,653 92, of which sum the amount of \$2,690 was expended in the entertainment of the civil and military officers of the governments of the countries visited by the ship, and who were received on board by their request.

The balance was expended at Southampton in entertaining the municipal authorities and the people of that borough, as heretofore stated.

Of the obligation of the government to pay the amount just stated, your committee does not entertain a doubt. No commander of a public vessel abroad is at liberty, unless under peculiar circumstances, to decline such visits as were made to the St. Lawrence by the sovereign authorities of countries with which it is our interest to cultivate amicable relations. The interchange of such civilities exercises a decided and beneficial influence, while, at the same time, the naval preparation and efficiency of our country is most wisely and humanely displayed; and for the payment of this sum your committee refers to the action of Congress in similar cases.

[See naval appropriation act of February 20, 1833, section 5, allowance to Master Commandant John D. Sloat, \$1,360. Civil and diplomatic appropriation act of March 2, 1833, allowance to Captain Daniel Turner of \$1,182 78, and to Captain George W. Storer, \$500. Act of July 7, 1838, for the relief of Captain Daniel T. Patterson, allowing him \$3,391; and act of June 17, 1844, for the relief of Captain Chas. W. Morgan, allowing him \$4,200.]*

Your committee is not aware of any precedent for the payment of the last specification. Its expenditure, however, took place under peculiar circumstances, at an interesting and exciting period of the political movements of Europe, and was governed by the most patriotic considerations. The ancient borough of Southampton pass, by the acclamation of its authorities, a resolution the most complimenting to our flag and our people; and with its entire population sought to honor both. These courtesies were recited and remarked upon with approval and pleasure by the people of Great Britain generally, as tending to connect more closely and firmly America with Britain; and had they been received with indifference, or with the commonplace and ordinary acknowledgments, he would not have met the just expectations of his government and people, nor would he have pursued that course which the interests of the navy and the peaceful and happy intercourse of the two countries seemed to dictate. With these views, your committee report upon these sums separately, by a bill.

* Appropriation to Commodore Perry in 1855.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1857.—Ordered to be printed.

MR. MALLORY made the following

REPORT.

[To accompany bill H. R. No. 405.]

The Committee on Naval Affairs, to whom was referred "An act for the relief of Commander John L. Saunders," (H. R. 405,) have had the same under consideration, and report :

The account and vouchers upon which the petitioner founds his claim for relief are the following :

"To expenses incurred in entertaining on board of this ship John C. Eldridge, esq., bearer of government despatches conveyed from Pensacola to Aransas, in September, 1845, by order of Commodore Conner ; also, to expenses incurred in entertaining on board of this ship the honorable John Slidell, minister to Mexico, conveyed from Pensacola to Vera Cruz, in November, 1845, by order of Commodore Conner,—five hundred dollars."

The account is dated "United States ship St. Mary's, Pensacola, January 1, 1846," and is made out against the Navy Department.

Appended to this account is the certificate of Commodore Conner, in the following words :

"In accordance with orders from the Navy Department, Commander Saunders was directed by me to receive on board the St. Mary's, and convey to the places, as stated in the above account, the gentlemen therein mentioned. The charge for their entertainment while on board his vessel appears to me reasonable and proper, and not beyond what has been allowed on similar occasions.

"D. CONNER,
"Commanding Home Squadron."

Accompanying said account and certificate are two orders from Commander Saunders, and statement as below, together with the protest of Mr. Waller, the purser. They appear in succession as follows :

"U. S. SHIP ST. MARY'S,
"Pensacola, January 10, 1846.

"SIR: You are hereby ordered to pay the above sum of five hundred dollars, placing the said sum to my credit on your books.

"JNO. L. SAUNDERS,
"Commander.

"L. T. WALLER, Purser."

"SIR: The above charge being novel and unusual in my department, my duty requires me to protest against the payment of it; but being cognizant myself of the circumstances upon which it is based, I shall pay it without hesitation upon a repetition of this order.

"L. T. WALLER, *Purser.*

"JOHN L. SAUNDERS,
"Commander."

"SIR: I hereby repeat the order to pay the above-named sum of five hundred dollars, and expect you to obey it.

"JNO. L. SAUNDERS,
"Commander."

"L. T. WALLER, *Purser.*"

"Under this order the money was placed to my credit on the purser's books, and returned to him upon being disallowed.

"JNO. L. SAUNDERS."

Upon the back of the account, certificate, orders and protest, is an endorsement by the Fourth Auditor, in his handwriting, of which the following is a copy:

"I respectfully state that the Navy Department never provides maintenance for a minister or bearer of despatches from another department, to whom a passage has been furnished in a public vessel; that expense, in the case of a minister, is paid by himself from his outfit. The Department of State has always refused any allowance on that account. In the case of a bearer of despatches, the expense should be defrayed, I think, either by himself or by the department which employs him, according to the understanding between the parties at the time of his appointment. As Mr. Eldridge bore despatches to General Taylor, he was probably employed by the Department of War.

"A. O. D.

"FOURTH AUDITOR'S OFFICE, *February 15, 1847.*"

Copy of orders of September 8, 1845, and of November 20, 1845.

[Confidential.]

UNITED STATES SHIP POTOMAC,
Pensacola Bay, September 8, 1845.

SIR: You will receive on board Colonel Eldridge, charged with despatches from our government to General Taylor, commanding our forces in Texas, and proceed without delay to Aransas bay, and land him at that place. After remaining there twenty-four hours, should Colonel Eldridge be ready to re-embark, you will take him on board, and land him at Galveston. You will then proceed with all despatch and join me off Vera Cruz. Unless I should be at anchor, you will not enter the roads, but continue to cruise off the castle at a safe dis-

tance until my arrival. Collect all the intelligence in your power at Aransas in relation to Mexican movements on the *Del Norte*—if the Mexican force has been increased, and the general opinion as to the probability of hostilities.

You will on no account make a longer delay at Aransas than I have mentioned. In case Colonel Eldridge is not ready to embark at the end of twenty-four hours after you have landed him at Aransas, you will then proceed at once to Vera Cruz. You will observe such parts of my general instructions as do not conflict with this order. Should you fall in with the Lawrence, you will hand to Commander Jarvis the accompanying instructions.

I am, very respectfully, your obedient servant,

D. CONNER,

Commanding Home Squadron.

Commander J. L. SAUNDERS,

Comm'g U. S. Ship St. Mary's, Pensacola.

UNITED STATES SHIP FALMOUTH,
Pensacola Bay, November 20, 1845.

SIR: The Secretary of the Navy having directed me to give a passage to La Vera Cruz, in a vessel of the squadron, to the Hon. J. Slidell, of Louisiana, you will be pleased to receive him on board the *St. Mary's*, under your command, and proceed without delay to the anchorage of Sacrificios. You will consult the wishes of Mr. Slidell as to the time and manner of his landing. Any suggestion of mine as to his convenience and comfort during the passage I am sure would be unnecessary. You will remain at Sacrificios until you receive any despatches that Mr. Slidell may wish to forward to the United States. On their receipt, you will repair to this place and send them by mail to Washington, fill up your provisions and water, and await further orders.

During your stay in the road of Sacrificios, you will not allow any of your officers or men to go on shore at La Vera Cruz, except on necessary public duty. On such occasions, you will direct the officer whom you may select for the purpose only to land, and the boat to remain off on her oars until his return.

As it is the desire of our government to be on the most friendly terms with Mexico, you will, on every occasion that may offer, endeavor, by acts of courtesy on your part, to strengthen the amicable disposition that has been manifested towards us by the authorities of La Vera Cruz.

I am, very respectfully, your obedient servant,

D. O. CONNER,

Commanding Home Squadron.

Commander J. L. SAUNDERS,

Comm'g U. S. Ship St. Mary's, Pensacola.

Your committee do not recognize the liability of the government to the petitioner for the conveyance of the public minister. This furnishes a charge exclusively against the minister himself; and it is within the knowledge of the committee that he was desirous, at the time, of making payment for all expenses incurred by the petitioner in consequence of his presence during the eight days he remained on board the ship, which payment the petitioner declined to accept.

The position and duties of bearers of despatches may distinguish them in this respect from ministers, and the government may be equitably responsible for the reasonable expenses incurred by the petitioner in the conveyance of Mr. Eldridge from Pensacola to Aransas. But your committee are of opinion that naval officers thus furnishing, under orders, transportation to public and paid functionaries, should look to the parties themselves, and not to the government, for the expense necessarily incurred.

In the present instance, as will be seen by the annexed letter from the Navy Department, the bearer of despatches "went on board that vessel (St. Mary's) on the 9th of September, and landed on the 16th September, 1845." Your committee have no data by which they can determine the probable expense to which the petitioner was subjected in the performance of this duty during these eight days, but they deem ten dollars per day a sufficient allowance, and they report an amendment to the bill of the House of Representatives to this effect.

NAVY DEPARTMENT, *January 12, 1857.*

SIR: I have the honor to acknowledge the receipt of your letter of the 10th instant, enclosing "An act for the relief of Commander Jno. L. Saunders," and other papers, and to inform you that, by the log-book of the ship St. Mary's, for the period mentioned, it appears that Mr. Eldridge went on board that vessel on the 9th of September, and was landed on the 16th of September, 1845; and that the Hon. Mr. Slidell went on board, with his servant, on the 20th of November, and was landed on the 30th of November, 1845.

The papers are herewith returned.

I am, respectfully, your obedient servant,

J. C. DOBBIN.

Hon. S. R. MALLORY,
Chairman Com. Naval Affairs, U. S. Senate.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1857.—Submitted, and ordered to be printed.

Mr. MALLORY made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Asa R. Ford, administrator of Augustus Ford, deceased, praying compensation for a chart of Lake Ontario, prepared by said Augustus Ford, deceased, in the war of 1812, for the use of the squadron thereon, &c., have had the same under consideration, and report :

That they have carefully examined the same, and the papers accompanying it. On reference to the Navy Department for information relative thereto, none could be elicited, the files of the department, "so far as can be ascertained," not disclosing any "fact in relation thereto." Your committee, on a full investigation of the facts submitted by the petitioner, are compelled to come to the conclusion that the service performed by said Augustus Ford, and for which his representatives now claim compensation, were of an entirely private nature, and that he has no claim upon the government therefor; and they consequently recommend that the committee be discharged, and the prayer of the petitioner be rejected.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1857.—Submitted and ordered to be printed.

Mr. SLIDELL made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of Captain F. Buchanan, United States navy, praying to be allowed the difference between the pay of a captain and that of a commander, while in command of the United States steam frigate "Susquehanna" during her recent cruise in the East India, China and Japan seas, have had the same under consideration, and report :

Franklin Buchanan states that in pursuance of an order from the Navy Department he, being then a commander in the navy, commanded the steam frigate "Susquehanna" from 6th November, 1852, to 8th March, 1855 ; that the "Susquehanna" is a vessel that should be, according to the usages of the service, commanded by a captain of the navy ; and that, having performed the duties of a captain, he should be allowed the difference between the pay of a captain and that which he received as commander during the period above mentioned. The memorialist took charge of the "Susquehanna," then in the China seas, under orders from the Secretary of the Navy directing him to proceed by the overland route to relieve the officer then commanding her. The Secretary's order (a copy of which is filed with the memorial) is addressed to Commander Buchanan, and as no intimation was made of any intended increase of pay, and as no authority is vested in the Secretary of the Navy to allow such increase, it is to be presumed that the memorialist entered upon his command with no expectation of receiving the pay of a higher grade. Until the passage of the act of 17th June, 1844, it had been customary to allow increased pay to officers for performance of the duties of a higher grade ; but by the 3d section of this act all previous provisions of law granting to officers temporarily performing the duties of a higher grade the compensation allowed by law to such higher grade were repealed ; nor have any of them been revived, except in the special case of a passed midshipman performing the duties of master, under the direction of the Secretary of the Navy.

It cannot, however, be said that a commander commanding a ship ordinarily assigned to a captain, is performing the duties of a higher grade. The pay depends on the rank of the officer, not on the rate of the ship. The rule applies to every class of officers, excepting pursers,

who, when attached to vessels in commission for sea service, are paid according to the rate of the vessel, salaries varying from \$3,500 to \$1,500 per annum. The memorialist presents, as a reason for allowing the increased compensation, that he was obliged to incur additional expense by the "Susquehanna" being placed at the disposal of our commissioners to China. This is a matter to be adjusted between those gentlemen and the memorialist; and there can be no doubt that they have always been, and still are, prepared to reimburse him for any such expenses.

He also alleges that he was exposed to additional expense in his intercourse with the Japanese authorities, in carrying on preliminary negotiations. For any expenses thus incurred, it is proper that he should be compensated; but as no statement is made of the amount the committee cannot act upon them; and they therefore ask to be discharged from the further consideration of the memorial.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1857.—Submitted, and ordered to be printed.

Mr. SLIDELL made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Lieutenant J. W. A. Nicholson, United States navy, praying compensation for acting as master on board the United States ship "Princeton," in 1844-'45, have had the same under consideration, and report:

That for the reasons stated in a report made this day in the case of Captain Franklin Buchanan, your committee ask to be discharged from the further consideration of the memorial.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1857.—Submitted and ordered to be printed.

MR. SLIDELL made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of Dr. Lewis G. Williams, praying the difference between the pay of surgeon and passed assistant surgeon in the navy of the United States, from May 27, 1853, to March 18, 1854, during which time he performed the duties of surgeon, have had the same under consideration, and report:

That for the reasons stated in a report made this day on the case of Captain Franklin Buchanan, your committee ask to be discharged from the further consideration of the memorial.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1857.—Submitted, and ordered to be printed.

Mr. SLIDELL made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Algernon S. Taylor, praying to be allowed the same difference of pay as an officer of the line doing duty in the staff as has been allowed to other officers of the marine corps under similar circumstances, have had the same under consideration, and report :

That for the reasons stated in the report made (at this session of Congress) in the case of Thomas J. Page, the committee ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1857.—Submitted and ordered to be printed.

MR. SLIDELL made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of James McDonnell, a carpenter in the United States navy, praying to be allowed the difference of pay between that of a carpenter and of a naval constructor during the time he performed the duties of naval constructor, have had the same under consideration, and report:

That, for the reasons stated in the report made (at this session of Congress) in the case of Thomas J. Page, the committee ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1857.—Ordered to be printed.

MR. MALLORY made the following

REPORT.

[To accompany bill S. 526.]

The Committee on Naval Affairs, to whom was referred the petition of Thomas J. Page, Commander United States navy, praying that he may be credited with the amount of losses sustained by and charged against him in the settlement of his accounts as acting purser, while in command of the expedition for the "exploration and survey of 'La Plata' and its tributaries," have had the same under consideration, and report:

The petitioner, a lieutenant in the United States navy, under the order of the Secretary of the Navy, took command of the steamer *Water Witch* during her late cruise of three years and five months, in the "exploration and survey of the river 'La Plata' and its tributaries."

In addition to the duties of commander of the ship, he was ordered to perform those of purser, though he expressly requested to be relieved from them because of his want of familiarity with them, and with accounts generally. He was not even allowed a clerk by the department. The extent of country to be explored, both by land and water, necessarily involved at various times, not only a separation of portions of the officers and "ship's company" from the vessel, but also made it necessary that the petitioner himself, should be absent for periods of from one to six months. It will be perceived that, had he remained on board to attend in person to the duties of purser, he could not have properly discharged, under his instructions, the more important duties of the expedition, and that in obeying these instructions, he was necessarily compelled to entrust to others not only the command of the vessel, but the discharge of the purser's duties also.

From the diversified character of the duties thus devolved upon him, it necessarily followed that the accounts rendered were very numerous. Notwithstanding this, there is not the expenditure of the smallest amount of money which has not been fully accounted for, nor a bill contracted which has not been recognized as made under the authority of his instructions.

The losses incurred, and for which he is held responsible, arise from payments made to sailors who deserted from the vessel in debt to the government; from errors made by the purser's steward (on whom he was compelled greatly to rely) in the calculation of the sailors' terms of service; from errors in a bill of exchange; from errors made by the steward in the calculations, &c. During the three years and five months the petitioner disbursed \$112,000 in money, and about \$10,000 in provisions and clothing.

The whole has been faithfully accounted for. The money for which he is held responsible was not spent contrary to law, but through ignorance, in part, of regulations with which he could not have been supposed to be familiar, inasmuch as they did not relate to his duties proper, and he knew nothing of their existence, and, in part, through errors of the steward, in whom, as above stated, he was necessarily obliged to confide much in the calculation of accounts, &c. The statements of the petitioner are fully sustained by his oath, and also by the certificate of Lieutenant William N. Jeffers, one of the officers on said expedition. The items disallowed amount to \$354 46, and, under the circumstances of the case, your committee, satisfied that Commander Page acted faithfully and with his best abilities for the public interest, should have those credits allowed in the adjustment of his accounts, and they report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1857.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany bill S. 527.]

The Committee on Naval Affairs, to whom was referred the petition of seamen on board the United States steamer Missouri, which was destroyed by fire at Gibraltar, in 1843, praying remuneration for the loss of their clothing by the burning of that vessel, have had the same under consideration, and report :

That, concurring in the views contained in a report upon this subject made at the 1st session 32d Congress, they hereby make it a part of this report, and recommend the passage of the accompanying bill.

The Committee on Naval Affairs, to whom was referred the petition of petty officers and seamen on board the United States steamer Missouri at the time of her destruction by fire, praying remuneration for clothing lost by that catastrophe, have had the same under consideration, and report :

That the attention of Congress was called to the subject of the losses sustained by these meritorious men by the President, in his annual message of the 5th December, 1843, in reporting the loss of the ship, as follows :

"It gives me great pain to announce to you the loss of the steamship Missouri by fire, in the Bay of Gibraltar, where she had stopped to renew her supplies of coal, on her voyage to Alexandria, with Mr. Cushing, the American minister to China, on board. There is ground for high commendation of the officers and men, for the coolness and intrepidity and perfect submission to discipline evinced under the most trying circumstances. Surrounded by a raging fire which the utmost exertions could not subdue, and which threatened momentarily the explosion of her well supplied magazines, the officers exhibited no signs of fear and the men obeyed every order with alacrity. Nor was she abandoned until the last gleam of hope of saving her had expired. It is well worthy of your consideration, whether the losses sustained by the officers and crew in this unfortunate affair should not be reimbursed to them."

The Secretary of the Navy, in his annual report of the same period,

also refers in commendation of the coolness and intrepidity of the entire crew on the occasion, which is shown to have been exhibited in a remarkable degree, by the letters of Captain Newton, Lieutenants Bissell and Blunt, and Purser Price, before the committee, each of whom testifies to the entire loss of every article by the crew, except only the clothes on their backs, and many having even these so burnt as to leave them almost naked; saving their lives only by throwing themselves into the water.

The committee, therefore, in view of these facts, unanimously report the accompanying bill to *reimburse* these brave men for their losses, consequent upon the abandonment of their own effects in their heroic devotion to duty and the public interests, in the unparalleled efforts made by them to save their ship from destruction.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1857.—Ordered to be printed.

Mr. SLIDELL made the following

REPORT.

[To accompany bill S. 529.]

The Committee on Naval Affairs, to whom was referred the petition of Thomas J. Page, lieutenant (now commander) in the navy, United States, for compensation for services performed as a purser, have had the same under consideration, and report :

This case was referred to the Naval Committee during the 1st session of 32d Congress, and as the report made therein on the 19th May, 1852, gives a full statement of the petitioner's claim, and of the reasons for rejecting it, with the exception of seventy-five dollars expended in the preparation of his accounts, the committee adopt the said report, and now present it to the consideration of the Senate.

IN THE SENATE OF THE UNITED STATES, April 1, 1852.

Mr. MALLORY made the following report :

The Committee on Naval Affairs, to whom was referred the memorial of Lieutenant Thomas J. Page, of the United States navy, asking to be allowed the pay of a purser for the time during which he commanded the United States brig Dolphin, and performed purser's duties on board said vessel, has had the same under consideration, and thereupon submit the following report :

The memorialist alleges that "in October, 1849, while on the East India station, he was appointed to the command of the brig Dolphin, and with the command was united the appointment also of purser." He then proceeds to state that he performed the duties of purser on board said vessel, and adjusted his accounts with the government as an acting purser; and he submits an account of the time so employed, and for which he claims compensation at the rate of \$1,500 per annum, making the sum of \$3,037.92. He does not claim to have been a

purser, or to have received any appointment as *purser*, or as an acting *purser*, but that he was appointed to command the brig, and that "with the command was united the appointment also of *purser*."

Your committee has given to the memorialist's claim very careful examination, with the view of affording him the relief he seeks, if it can be granted consistently with the existing laws and usages of the navy on the subject; and your committee is aware that many other officers of this branch of the public service have occupied similar positions, and performed similar services, and that their claims also are involved in its action.

The records of the Navy Department show that for a very long period it has been the practice of the Secretary of the Navy to direct the commanders of brigs and other smaller vessels to perform *purser's* duties in addition to those of commander. The duties of supervising the financial concerns of the vessels generally have long been, and still are, considered incident to the command of such vessels, when the exigencies of the public service do not admit of their having a regular *purser*. Before the year 1835 officers commanding and thus performing *purser's* duties were permitted to purchase their own "slops," &c., and to charge a profit upon the articles furnished to their crews; but the act of March 3, 1835, (see *Stat. at Large*, vol. iv, page 757,) precluded officers of the navy from receiving *any* incidental allowances, except for travelling expenses, and for the performance of the duties of a superior grade. In lieu of incidental allowances their pay proper was greatly augmented. As an example, the aggregate pay and subsistence of a lieutenant on sea service was raised from \$965 to \$1,573, and that of a lieutenant commanding, (the case of the memorialist,) from \$1,176 to \$1,873; and it was considered that this increase of pay would compensate for such "*extra*" services as had previously been separately charged for.

Your committee is not aware that any lieutenant commanding has ever received any extra allowance for attending to the duties of *purser* on board of his vessel; and when the memorialist took command of the *Dolphin*, both the law and the practice of the department under it were in operation.

But in addition to the act just cited, the army appropriation act of August 23, 1842, directing that—

"No officer of any branch of the public service shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or any other service or duty whatsoever, unless the same shall be authorized by law, and the appropriation therefor explicitly set forth that it is for such additional pay, extra allowance, or compensation."

The twelfth section of the act of 26th August, 1842, is in these words:

"No allowance or compensation shall be made to any clerk or other officer by reason of the discharge of duties which belong to any other clerk or officer in the same or any other department, and no allowance shall be made for any extra services whatever which any clerk or other officer may be required to perform."

The third section of the act of 3d March, 1839, is in these words:

"No officer in any branch of the public service, or any other person whose salaries or whose pay or emoluments is or are fixed by law and regulations, shall receive any extra allowance or compensation in any form whatever, for the disbursement of public money, or the performance of any service, unless the said extra allowance or compensation be authorized by law."—(*U. S. Stat. at Large*, vol. 5, page 349.)

The act of 30th September, 1850, (U. S. Stat. at Large, vol. —, page 542-3,) declares that "hereafter the proper accounting officers of the treasury, or other pay officers of the United States, shall in no case allow any pay to one individual the salaries of two different offices on account of having performed the duties thereof at the same time. But this prohibition shall not extend to the superintendents of the executive buildings."

The design of the legitimate construction of these acts cannot admit of a doubt.

But the memorialist claims that he held two distinct offices, and exercised the duties of both, and is entitled to receive the pay of both; and he submits an extract from a decision of Chief Justice Taney, delivered in the case of "*The United States vs. Joseph White*," in the circuit court, Maryland district, 1851, and also extracts from an opinion of Attorney General Crittenden, June 7, 1851, in support of his claim.

It is evident to your committee that the memorialist did not hold two distinct offices. The duties of a purser on board of small vessels like the *Dolphin* were incident to those of commander, and compensation, in lieu of a distinct and separate allowance for them, had previously been made by law. That such incidental services afford no foundation for a claim for extra compensation was evidently the opinion of the chief justice in the case cited. He says:

"A navy agent, therefore," (and the principle is equally applicable to any other officer,) "is not entitled to compensation beyond his salary as fixed by law for any extra services, although such services may be out of the district for which he is appointed, and may more properly appertain to the duties of another navy agent, or even to an officer of the government filling an office of a different character. His salary is the only compensation for services required of him and performed by him if he holds no other office or appointment."

The memorialist was not a purser; he pretends no appointment as purser; the duties of purser were incident to the command of the *Dolphin*; and they were discharged by "*an officer of the government filling an office of a different character*."

The memorialist is not entitled, in the judgment of your committee, to the relief he claims. He alleges that, in the preparation of his accounts, in the various forms required by the practice of the accounting officers of the treasury, he expended about seventy-five dollars. A reasonable allowance should be made for this expenditure. A naval officer cannot be presumed to be conversant with the accurate details so necessary in the preparation and adjustment of long standing accounts, beyond the sphere of his ordinary and legitimate duties; and your committee reports a bill for the relief of the memorialist to this extent.

IN THE SENATE OF THE UNITED STATES.

JANUARY 23, 1857.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany bill S. 530.]

The Committee on Pensions, to whom was referred the petition of John Ryley, an Indian, who prays that a pension may be granted him for services in the war of 1812, beg leave to report:

That having conferred with the Hon. Lewis Cass, under whom the petitioner served, the committee find the following statement, signed by General Cass, and adopt the same as part of their report: "I am well acquainted with the petitioner, John Ryley. He is a half-blood Ottawa Indian, who adopted the cause of the United States in the last war with England. He was active, brave, and faithful, and was sent upon various dangerous missions, which he executed satisfactorily. Much of his conduct passed within my own observation, and I relied upon him as a true friend of our cause. I have seen him in action with the Indians, and was well satisfied with him. I have employed him in enterprises of danger and difficulty and found him brave and discreet. In those times it was no light matter to penetrate the Indian country with a view to ascertain the condition and objects and preparations of the Indians, in order to be ready for and counteract them. He has thus traversed extensive regions, and I always placed confidence in his reports and was never deceived. I saw him last fall and found him in a state of destitution, suffering from physical infirmity, and apparently with a slender hold upon life. The interview, to me, was a painful one, recalling, as I did, his past strength and activity, employed in the service of our country, and contrasting in the days of his manhood with his present condition of exposure and wretchedness. It is one of those cases which call for the intervention of Congress."

Therefore your committee would recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1857.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany bill S. 531.]

The Committee on Pensions, to whom was referred the petition of citizens of Sandusky, Ohio, praying a pension may be granted to Jonathan Painter, for services rendered as a guide and spy during the war of 1812, beg leave to report:

That the petitioners represent that said Painter was one of a few Wyandot Indians that aided the Americans in the war of 1812, and that he rendered valuable services in the capacity of a spy ; that, in the battle of Maguaga and Brownstown, he received the special commendation of the officers in command ; and his services in carrying messages through hostile regions from one command to another, were highly appreciated by the officers needing such services. Your committee also subjoin and adopt, as part of this report, an extract from a letter of Hon. Lewis Cass, dated Washington, January 6, 1857. " In 1812, Painter was a powerful, active young man. He had been taken prisoner in early life by the Wyandots, and had become an Indian in all his habits and feelings. He was living at Upper Sandusky, and immediately favored the American cause, and continued faithfully attached to it through the whole war. He was confidentially employed by General Harrison in scouring the country as a guide and spy, and with messages to the Indians. He acted with fidelity and bravery, and exercised a good deal of influence over the Wyandots, many of whom were thus prevented from joining the enemy. He is now old, poor, and helpless, and certainly some provision should be made for him." The committee, therefore, report the accompanying bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

—
JANUARY 28, 1857.—Ordered to be printed.
—

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany bill S. 532.]

The Committee on Pensions, to whom was referred the petition of Mrs. Catharine Jacobs, praying to be allowed a pension, beg leave to report:

That the husband of petitioner, as appears of record, was the servant of General George Washington, during the revolutionary war; and that he was wounded seriously at the battle of Brandywine, in said war. He was placed on the pension list by a special act of Congress. His widow, Mrs. Catharine Jacobs, who is now old and in indigent circumstances, prays Congress to grant her such relief as may contribute to her comfort in her old age. Your committee, after a careful examination of the evidence in this case, recommend her claim to the favorable consideration of Congress, and therefore report the accompanying bill.'

IN THE SENATE OF THE UNITED STATES.

JANUARY 28, 1857.—Ordered to be printed.

Mr. BELL made the following

REPORT.

[To accompany bill S. 533.]

The Committee on Naval Affairs, to whom was referred the memorial of Jedediah H. Lathrop, late navy agent at Washington, make the following report:

The memorialist was navy agent at the city of Washington from June, 1849, to June, 1853, and gave bond in a penalty of \$40,000 for the faithful performance of the duties of his office. His compensation by law as navy agent was one per cent. on the amount disbursed, but not to exceed the maximum of two thousand dollars per annum. The duties of the office were simple, well understood, and without material risk to the officer; and the annual disbursements were more than sufficient to produce the maximum salary of \$2,000 a year.

By the general naval appropriation acts of 31st August, 1852, and 3d March, 1853, extra compensation was granted to the officers, seamen and marines who had served on the Pacific coasts of Mexico and California during the period therein specified. The duty of "*allowing and paying*" this extra compensation was, by the express terms of these acts, devolved upon "*the proper accounting officers of the treasury*," who were the Fourth Auditor and the Second Comptroller. These officers were of opinion that to allow and pay these claims in any reasonable time, in the ordinary routine of the treasury, would occupy nearly the whole clerical force of their respective bureaus.—(See affidavit of John Etheridge, marked E.) They therefore, after consultation with the Secretary of the Navy, determined to transfer this duty from themselves to the navy agent at Washington. Mr. Lathrop, who then held the office of navy agent at this place, protested against the proposed transfer to him of this new, burdensome and responsible task; alleging that it was foreign to his office, and belonged, by the express terms of the law, to the accounting officers themselves.—(See same deposition.) His protest, however, was unavailing, and he was required to perform the duty. Up to the expiration of his term of office Mr. Lathrop disbursed, on account of this extra compensation, the sum of \$330,406 30.—(See letter of Fourth Auditor, marked A.) For the performance of this service the memorialist claimed a credit in his account, rendered on leaving office, of two and a half per cent. on

the whole amount disbursed as aforesaid ; which credit was disallowed at the treasury, and suits brought to recover the money by the United States, on his official bond, against him and his sureties severally. Except this amount, all other public moneys in his hands were promptly paid into the treasury.

These suits were tried at the late October term of the circuit court for this District, and verdicts rendered in each in favor of the government ; the court being of opinion, as your committee infer, that all extra compensation to persons holding office under the United States was positively prohibited by the clear and unequivocal terms of various acts of Congress, however great may have been the amount of extra service performed or meritorious its character, and that his only remedy was in an application to Congress.

To obtain relief from these judgments against himself and his sureties, the memorialist has presented his memorial to Congress in this case, and has furnished a statement of facts and arguments, together with evidence in its support, which your committee are of opinion entitles him to such relief on clear principles of justice.

At the time when the memorialist was preparing to perform the duties thus transferred to him, he was merely furnished by the department with copies of the ship rolls containing the names of the parties entitled to the extra compensation, and the sums due. These rolls contained the names of about 11,000 men who were dispersed in nearly every quarter of the world. Many of them were dead. Many of them had served and were enrolled under assumed names. On one vessel, for example, there were eleven John Smiths, three William Smiths, two Samuel Smiths, two Henry Smiths, five James Smiths, four Charles Browns, five John Browns, two James Browns, two William Browns, two George Browns, seven John Williamses, four Charles Williamses, six William Joneses, and seven William Johnsons. And similar facts are shown by the rolls of all the vessels with large crews.

An example, illustrating how important and difficult it was to decide these questions of identity, is mentioned in the affidavit of Mr. Koonen, who was then, and still is, a clerk in the office of the navy agency at this place. "Indeed," says he, "there were several instances in which payments were made to sailors identified by officers with whom they had sailed, and who, it was afterwards proved, were the wrong persons." From this confusion of names ; from the fact that the men belonged to a class proverbially confiding and easily imposed upon ; that their number was very large and the amounts due to each generally small ; that the payments had to be made generally on powers of attorney, and to parties claiming to represent those who had died ; it is perfectly manifest that the new labor, anxiety of mind, and risk imposed upon the navy agent in the execution of these extra duties, were three or four-fold greater and more responsible than the ordinary and legitimate duties of his office. Besides the attempts to obtain payment of some of the claims on forged or fraudulent documents, the same witness declares "that they were numerous and ingenious, and in many instances successful, being so perfect in their character as to render it impossible to decide that they were not genuine." The present Secretary of the Navy in

reply to a letter addressed to him by your committee, says "that he ('the memorialist') obtained from the Treasury Department the names and amount due. But he was responsible for paying it to the proper man assuming the name; a responsibility peculiarly hazardous in regard to sailors, who assume new names very often whenever they enlist, and who are easily seduced by agents into cunningly devised plans for imposing upon the navy agent. I learn that they succeeded in many cases, and that often perfectly formal letters of administration were presented, the money paid to the administrator, and subsequently claimed by the party, who had not died." The amount of this new duty upon the navy agent, Mr. Koone says, "was not less than twenty-fold those belonging to the ordinary duties of the office, and twenty-fold what they had been before the passage of these acts."—(See his affidavit, marked F.) He further stated on the trial of the cause in court, as certified by Messrs. Wylie and Bradley, defendant's counsel on that occasion, that "after the passage of the extra pay acts, Mr. Lathrop was allowed one additional clerk, and another one for a few weeks. When Mr. Allen succeeded Mr. Lathrop he was allowed a further increase of four clerks and of one messenger, who performed the duties of a clerk. These clerks received each a salary of \$1,200 and the messenger \$750. The salaries of the regular clerks were increased also. In my opinion there was no increased amount of labor in the office after Mr. Lathrop was succeeded by Mr. Allen. The new clerks performed only what had been previously performed by Mr. Lathrop himself."—(See the statement of Messrs. Bradley and Wylie, marked E.) Mr. Lathrop himself asserts, (and your committee have no reason to doubt his statement,) that he examined every case himself before it was paid, and that the duty occupied his most anxious attention in office hours and out of office hours, at night and by day, not excepting the hours of Sunday, and that he was required to do so to keep up with his work, and to protect himself and his sureties from losses, which were otherwise inevitable. The counsel of the United States, on the trial of the cause in the circuit court of this District, in a certificate, marked D, says, "I acted as counsel for the United States in the late trial in the circuit court of the District of Columbia, against J. H. Lathrop, late navy agent at Washington city, and his sureties. I am well acquainted with the facts of the case, and have no hesitation to state, at the request of Mr. Lathrop, that, in my opinion, Congress ought to release him from the judgment that has been recovered in the case." The jury also, who tried the cause, have unanimously signed a certificate, which is too long to quote in full, but in which they say, in substance, that they deem it due, in justice to Mr. Lathrop, to say, that in their opinion, from the evidence in the cause, Mr. Lathrop is entitled in equity to the relief he asks.—(See their certificate, marked C.)

Your committee have given this case a careful examination, and think the memorialist is justly and equitably entitled to be released from the judgments which have been obtained against him and his sureties, as before stated. The amount charged by him, two and a half per cent. commissions on his disbursements of these extra pay appropriations, your committee consider not more than a reasonable

compensation for the very hazardous and laborious nature of the duties performed. In some instances, Congress has granted a much larger commission for services less meritorious and hazardous. William Speiden, a purser in the navy, was, by a recent act, allowed two and a half per cent. on disbursements made by him outside of his official duties.—(Statutes at Large, vol. 10, pp. 742-'43.) Andrew Armstrong, late navy agent at Lima, was, for similar services, allowed a commission of five per cent.—(See act June 30, 1834, ch. 207.) William A. Teneille, for similar services, was allowed five per cent.—(Act 14th July, 1832, ch. 279.) The case of Mrs. Hetzell, widow of A. R. Hetzell, assistant quartermaster United States army, was so precisely similar to this of the memorialist, that your committee have made the following extracts from the report of the Committee on Military Affairs of the Senate, showing the character of the claim in that case:

"In the account rendered by the deceased, for a part of the third quarter of the year 1838, the following item, charged by him to the United States, was disallowed at the treasury, viz:

" 'Percentage on disbursements, on account of the appropriation for preventing and suppressing Indian hostilities, from the 4th day of July, 1836, to the 30th September, 1838, \$519,549 78, at 2½ per cent., \$12,988 74.'

"It will be noticed that that duty was entirely disconnected with his regular quartermaster's account, which was covered by his official bond; but during this very period his official disbursements on account of the army amounted to several hundred thousand dollars, which was duly closed at the Treasury Department.

"Upon the account presented by the deceased, in which the foregoing item is found, is the following memorandum, under his own hand, in explanation of the charge:

" 'The amount charged as per centage is not retained, but the undersigned cannot but consider it as a just and equitable claim against the government, in consequence of the unusual and extraordinary responsibilities he assumed while on duty as principal quartermaster in the Cherokee nation. The funds placed in his hands, amounting to nearly \$700,000, owing to the system of accountability he established, were disbursed in such a manner that government lost nothing by the defalcation of agents, whom it became necessary to employ from time to time to assist in furnishing supplies, procuring transportation, &c., at the various posts in the Cherokee nation. His duties were arduous in the extreme, as the several commanding officers under whose orders he was acting can testify; and as the money expended, on which he claimed a per centum, was out of an appropriation distinct from the regular army appropriation, he considers it, to say the least, equitable, and that it ought to be allowed.' "

This claim was allowed by act of 30th August, 1852, chapter 99; and the sum of \$12,980 74, being 2½ per cent. on the amount disbursed, was therein appropriated. Even should the relief here prayed for be granted by Congress, your committee are of opinion that the evidence before them shows, that in no other way could these claims have been examined and paid so economically for the government or so satisfactorily for the claimants as in the one case which was adopted.

It is a fact worthy of consideration, also, that since the expiration of Mr. Lathrop's term of service in said office the salaries of navy agents have been increased 50 per cent, and this simply for the performance of their proper and regular duties.

Mr. Kooner, in the statement already referred to, gives it as his opinion that five per cent. would be a small compensation for the labors and risk of the memorialist in the performance of these duties. The memorialist himself asserts that when this business was transferred to him by the accounting officers of the treasury, against his remonstrance, he told them that if he were required to perform so large an amount of work which did not properly belong to him as navy agent, he should expect to be paid and receive an extra compensation therefor; and that the accounting officers gave him to understand that he undoubtedly should and ought to be paid.

Your committee recommend that the relief prayed for by the memorialist be granted, and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1857.—Ordered to be printed.

Mr. WELLER made the following

REPORT.

[To accompany bill S. 537.]

The Committee on Military Affairs, to whom was referred the petition of Captain Alexander Montgomery, assistant quartermaster of the United States army, having had the same under consideration, report:

The petitioner prays to be relieved from the payment of an amount standing against him upon the books of the treasury for which he is unable to account by proper vouchers.

Captain Montgomery, while acting in his official capacity during the war in Mexico, was charged with the safe keeping of very large sums of money in silver coin, without having competent means of securing it against robbers, of which that country was then so full. Instead of iron safes, he was compelled to use wooden boxes; and often, when he had more coin than his boxes would contain, he was forced to pile it up upon the floor of a room which was only fastened by an ordinary door. It is by no means surprising that he lost largely of these funds; and upon his application to Congress in 1848, an act was readily passed relieving him from liability for losses sustained by him under such circumstances.

In making up the petitioner's accounts at the close of the Mexican war, in 1848, the balance against him was stated to be about forty-four thousand dollars, and relief was granted accordingly for the balance, as it then appeared; but, upon subsequent examination of Captain Montgomery's accounts, it was found that he had entered to his credit certain amounts to which he supposed himself entitled, but which properly belonged to other officers. These sums arose chiefly from drafts outstanding against him, and which, through inadvertance in his clerk, were omitted to be charged to him.

The amount for which the petitioner now prays relief is about \$7,000; and the committee, not doubting, under the circumstances, that Congress would have granted relief to Captain Montgomery in this additional amount in 1840, if his account had been properly stated, and being well acquainted with his enviable character as a man of integrity and honesty, who would be slow to ask for the al-

lowance of an unjust claim against the government, report a bill, and recommend its passage, authorizing the cancelling of the amount now charged against him as an assistant quartermaster in the army during his service as such in the Mexican war.



IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1857.—Ordered to be printed.

Mr. WELLER made the following

REPORT.

[To accompany bill S. 538.]

The Committee on Military Affairs, to whom was referred the petition of Joseph Verbiski, having had the same under consideration, report :

That the petitioner enlisted in the United States army in October, 1851, as a private, and was attached to company I, 2d infantry. While engaged in firing a national salute at Fort Yuma, California, on the 4th of July, 1852, the accidental discharge of a cannon blew his left arm from his body, seriously injured his right arm, almost destroyed his power of speech, and otherwise so injured him that he is totally unfit for manual labor. He was honorably discharged from the army at San Diego, California, in January, 1853, when his name was placed upon the pension rolls, under the existing laws, at \$8 per month, it being the largest amount to which he was so entitled. His injuries, received in the manner above stated, prevent him from engaging in any profitable employment, and his pension is now entirely insufficient to yield him decent support, and he prays for its increase to \$20 per month.

The first lieutenant of the regiment to which the petitioner belonged speaks of him, in a paper accompanying his petition, in the very highest terms, and says that Verbiski would soon have been made a non-commissioned officer, as he was much esteemed by the whole regiment. The committee, seeing the extent of his disability, and as it is obvious that his present pension is too small, report a bill, and recommend its passage, to increase the petitioner's pension to \$17 per month, which he would have received if he had been a non-commissioned officer at the time he was wounded.

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1857.—Ordered to be printed.

Mr. WELLER made the following

REPORT.

[To accompany bill S. 539.]

The Committee on Military Affairs, to whom were referred the petitions of Lieutenant James G. Benton, Brevet Majors E. B. Babbitt and James Longstreet, of the United States army, having had them under consideration, report:

It appears that while these officers were stationed at San Antonio, Texas, in July 1850, application was made to them, respectively, for ordnance stores, quartermaster's stores, and subsistence stores, by Parker H. French, the chief of a body of emigrants, on their journey to California.

The said French bore and exhibited to the petitioners what purported to be a letter of credit from Howland & Aspinwall, of New York, and he possessed the confidence of numerous citizens and merchants of Texas, to some of whom he was personally known. He was the acknowledged chief of an emigrating party, and was, to all appearances, a reliable and responsible man.

By authority of the joint resolution of Congress, approved March 2, 1849, officers in these departments are allowed to sell to persons emigrating to California such stores as the state of the public supplies will permit, and, with the concurrence of Brevet Major General Brooke, they sold to the said French as follows: ordnance stores, \$1,021 04; quartermaster's stores, \$519 93½; subsistence stores, \$448 98; for which said French gave them separate drafts upon Howland & Aspinwall, of New York, which drafts, having been forwarded for collection, were protested for non-acceptance. It was then discovered that the letter of credit exhibited by French was a forgery, and all his representations were false. Several of the best merchants of San Antonio were at the same time and in the same manner imposed upon for large amounts of money, &c., and the imposter has fled beyond the reach of law. It is apparent that these petitioners, in all these transactions, exercised due diligence, acted under the instruction of their commanding general, and that the money was lost without any fault of theirs. The committee, therefore, recommend a bill for their relief, authorizing and directing the proper accounting officers of the treasury to credit their accounts the several amounts of which they were respectively defrauded.

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1857.—Ordered to be printed.

Mr. SLIDELL made the following

REPORT.

[To accompany bill S. 540.]

The Committee on Naval Affairs, to whom was referred the petition of E. Lloyd Winder, United States navy, asking to be allowed the difference of compensation between the grade of a passed midshipman and master for the time he acted as master, under the direction of the Secretary of the Navy, have had the same under consideration, and report :

The petitioner asks to be allowed increased compensation for services rendered by him, he having, while a passed midshipman of the United States navy, performed the duties of a master, under directions from the Secretary of the Navy, from 10th June, 1845, to 4th November, 1846. Many cases of an analagous character have been referred to your committee, and in their consideration they have adopted, as their general rule of action, the policy of refusing to grant to the officers of the navy any higher compensation than that allowed to them by law. There are, however, in the case of the petitioner, peculiar circumstances which make a deviation from the common rule just and proper. In the third section of the act of 17th June, 1844, all previous provisions of law granting to officers temporarily performing the duties belonging to those of a higher grade the compensation allowed by law to such higher grade were repealed. The general legislation remains unchanged ; but, by act of 10th August, 1846, an exception was made in favor of passed midshipmen performing the duties of master under the direction of the Secretary of the Navy. It is to be presumed that this exception was established in consequence of the peculiarly responsible duties of masters as navigators of our ships of war. The service of Mr. Winder was performed in the interval between the enactment of the general repealing law and the establishment of the special exception in favor of passed midshipmen acting as masters. This fact, in the opinion of the committee, takes the case of Mr. Winder out of the ordinary principle which has governed them in refusing to recommend allowances for increased pay, and they accordingly report a bill for his relief.

IN THE SENATE OF THE UNITED STATES.

JANUARY 30, 1857.—Ordered to be printed.

Mr. SLIDELL made the following

REPORT.

[To accompany bill S. 541.]

The Committee on Naval Affairs, to whom was referred the petition of Daniel Ammen, a lieutenant in the United States navy, praying to be allowed the difference between that of master and passed midshipman during the time he acted as master, have had the same under consideration. and report:

This case does not differ from that of E. Lloyd Winder, (reported on this day,) and for the reasons therein stated your committee report a bill for the relief of the petitioner, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

—
JANUARY 30, 1857.—Ordered to be printed.
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Mr. SLIDELL made the following

REPORT.

[To accompany bill S. 542.]

The Committee on Naval Affairs, to whom was referred the petition of Joshua D. Todd, a lieutenant in the United States navy, praying to be allowed the difference of pay between master and passed midshipman during the time he was acting master, have had the same under consideration, and report :

This case does not differ from that of E. Lloyd Winder, (reported on this day,) and for the reasons therein stated your committee report a bill for the relief of the petitioner, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1857.—Ordered to be printed.

Mr. STUART made the following

REPORT.

[To accompany bill S. 545.]

The Committee on Public Lands, to whom was referred the "petition of H. W. Benham, administrator of the estate of the late John McNiel, praying a confirmation of the title of said McNiel to certain lands," report :

It appears that on the 20th of June, 1840, the late John McNiel purchased of Lucius Lyon certain portions of the south fractional half of the northeast quarter of section nineteen, in township seven north, range five west, situated in the State of Michigan. This tract of land being located on the east side of Grand river, and said Lyon, being the owner of a tract of land directly opposite, on the west side of said river, also included in said deed to McNiel certain islands lying in Grand river between said two tracts of land, believing his original purchase of the government included said islands.

It further appears that said Lyon was in the occupancy of those islands from 1832 to the date on which he deeded them to McNiel, in 1840; since which date they have been in the occupancy of McNiel, or his legal representatives.

It also appears that in 1856 the largest one of those islands was surveyed by the government surveyor, and the minutes of the same forwarded to the General Land Office, which is designated as island number four, containing 4.21 acres.

The petitioner, therefore, fearing that the title of said McNiel to said island, and the islets adjacent thereto, may be affected in consequence of said survey, prays that the title of the government to the same be relinquished to the estate of said McNiel.

The committee being of the opinion that the estate is equitably entitled to the land claimed, accordingly report the accompanying bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1857.—Ordered to be printed.

Mr. STUART made the following

REPORT.

[To accompany bill S. 546.]

The Committee on Public Lands, to whom was referred the memorial of Mrs. Jane Smith, praying to be allowed a pre-emption right to certain lands, report:

It appears by the affidavit of Mrs. Smith that she is the owner of the east part of section thirty-three, in township six north, range five east, in the State of Alabama; and that she has enclosed and improved the west half of the southwest fractional quarter, and the west half of the northwest fractional quarter of the same section, which lands were formerly held as an Indian reservation for Peter Randon, but which were abandoned by him in 1836. In consequence of being held as a reservation, said lands are not subject to private entry.

The memorialist, therefore, prays to be allowed to enter the same at the minimum price of government lands.

The Commissioner of the General Land Office corroborates the statements of the memorialist, so far as they relate to the lands referred to having been held as an Indian reservation by Peter Randon, and of his abandonment of the same in 1836. He also states that there is no obstacle in the way of special legislation in favor of Mrs. Smith.

The committee therefore report the accompanying bill for her relief.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1857.—Ordered to be printed.

Mr. JOHNSON made the following

REPORT.

[To accompany bill S. 547.]

The Committee on Military Affairs, to whom was referred the memorial of William F. Russell, having had the same under consideration, report:

The memorialist prays to be indemnified for losses sustained by him by the burning of two houses which belonged to him at Fort Capron, Florida, in December, 1853, while in the occupancy of the United States troops.

Major J. A. Haskins, the officer in command of the post at the time, certifies: "That on or about the 15th December, 1853, two houses, owned or claimed by Major W. F. Russell, were burned to the ground. One of the houses was occupied at the time by a laundress of my company. She was placed in the house by my predecessor, as I understand, without the knowledge or consent of Major Russell. The fire originated from a stove used by this laundress."

Robert Faulder, a soldier in company D, then stationed at Fort Capron, certifies that he was occupying one of these houses, by order of Lieutenant Dickerson, at the time it was burnt; that it accidentally took fire, and was totally consumed, together with an adjoining building, both of which belonged to Major W. F. Russell.

Manuel Navarro, a practical house-joiner, after testifying to the occupancy and burning of these houses, states, under oath, their value to be \$1,200, and declares that he would not contract to put up two such houses for less than that amount. The veracity of this witness is vouched for by the subscribing magistrate, who also concurs with him in his valuation of the houses burned, which, he says, is "reasonable and just."

The committee, considering the memorialist in this case entitled, in equity and justice, to remuneration for his loss, have reported a bill for his relief, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1857.—Submitted, and ordered to be printed.

MR. CLAY made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Mrs. Rodolphine Claxton, widow of the late Commodore Claxton, of the United States navy, beg leave to report :

That the pension files show that the late "Commodore Claxton was appointed midshipman, June 20, 1806; appointed by the department acting lieutenant of the Wasp, June 9, 1811; confirmed by the Senate, January 8, 1813."

The foregoing extract shows the character of the appointment held by Commodore Alexander Claxton on board the Wasp, in action with the Frolic, on the 18th of October, 1812, and in which action he was wounded. It also appears that Commodore Claxton was placed on the pension list, June 28, 1837, for three-fourths disability, at \$7 12½ per month, from the 18th of October, 1812, and such pension was paid up to his decease, March 7, 1841.

It does not appear that he ever applied to the Pension Office or to Congress for the pension of \$20 per month now claimed.

The facts show that he drew in arrears of pension \$7 12 per month from the 18th October, 1812, to the 28th June, 1837, when first placed upon the pension list, and that he continued to draw the same pension to his death, on the 7th March, 1841; and yet, while drawing this pension for three-fourths disability, he continued to draw his pay as a lieutenant, and next as a captain in the navy. He was paid as an invalid pensioner, as if unfit for service, and at the same time paid as an efficient officer of the navy, capable of rendering full service! He united in his own person two different and incompatible characters, and was paid for both for more than twenty-eight years, and was, it appears, contented, as he should have been, with the pay he received as an invalid three-fourths disabled, while getting that of an officer free from all disability!

Yet, in the face of these facts, the petitioner asks us to pay her the difference between \$7 12½ and \$20 per month for twenty-eight years and four months, amounting to about \$4,378, and claims it as having been justly due to him!

The committee regard the claim as without any color of right in

law or equity, and have recommended the adoption of the following resolution :

Resolved, That the prayer of the petitioner, Rodolphine Claxton, widow of the late Alexander Claxton, captain in the United States navy, be rejected.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1857.—Ordered to be printed.

Mr. EVANS made the following

REPORT.

[To accompany Joint Resolution S. 45.]

The Committee on Revolutionary Claims, to whom was referred a joint resolution to amend the act entitled "An act for the relief of Frederick Vincent, administrator of James Le Case, survivor of Le Case & Mallett," have examined the same, and submit the following report :

This case was presented to Congress at the first session of the 29th Congress, and again with additional documents at the second session, but does not appear to have been acted on. Again at the first session of the 30th Congress it was referred to the Committee on Revolutionary Claims, who reported a bill, but there was no action on it. At the second session the bill was rejected. It was again presented to the 31st Congress and leave given to withdraw the petition. At the first session of the 32d Congress, there was a full report in favor of the claim, and a bill reported for its payment with interest, but there was no action on the bill. The report in that case was very full. It contains a full statement of the facts in the case, and is as follows :

"Mr. Walker made the following report :

"The Committee on Revolutionary Claims of the Senate, to whom was referred the petition of Frederick Vincent, administrator of James Le Case, surviving partner of the mercantile house of Le Case & Mallett, respectfully report to the Senate :

"That the claim of Le Case & Mallett arose for advances made by them to the United States during the revolutionary war. The balance due to them was settled and adjusted by the superintendent of finance, (Robert Morris,) at \$4,890 83, on July 1, 1784.

"This debt was duly registered in the books of the Treasury of the United States under the old confederation, and was duly transferred and registered in the books of the treasury of the United States under the constitution, according to the provision of the sixth article, that 'all debts contracted and engagements entered into before the adoption of this constitution, shall be as valid against the United States under this constitution as under the confederation.'

"The documents accompanying the petition, certified from the

treasury, show that this is a debt of the highest moral obligation, for advances and supplies during the revolutionary war, recommended by the superintendent of finance as deserving the special notice of Congress.

"The same books of the treasury which contain the evidence and amount of the claim as liquidated, also bear witness that it is yet outstanding and unpaid; or if it had been paid, the books of the treasury would have contained the evidence of when, and to whom paid, as in other like cases of registered debts of the United States.

"Why this debt has not been paid, and why the delay in making application for payment, are matters fully explained by the testimony accompanying the petition, and by the emptiness of the public treasury at the close of the war, and at the adoption of the federal constitution.

The act of 4th of August, 1790, (1 Statutes at Large, by Peters, page 138,) making provision for the payment of the United States debt, acknowledges the inability of the United States to pay principal or the interest then in arrear, and proposed a loan of \$12,000,000, also a subscription of the domestic debt of the United States to the loan.

"Before this act passed, the surviving partner, Le Case, then residing in Philadelphia, made a visit to his plantation on the island of St. Domingo, and was there massacred in the insurrection of the negroes, which first broke out in the year 1789. The family of said James Le Case escaped from that island in the year 1793, during the second insurrection of the negroes, and settled in Norfolk, in the State of Virginia. No person took out letters of administration on the estate of the surviving partner, Le Case, until December 20, 1844, as appears by the certificate of the register of Philadelphia, and the certified copy of the letter of administration granted then to the petitioner, Frederick Vincent.

"So it appears, from the death of the surviving partner, Le Case, in 1789, until December 20, 1844, there was no person authorized to demand and receive, and give an acquittance to the United States for this registered debt; which circumstances corroborate the books of the treasury in proving negatively that this debt has never been paid, because there was no person to whom payment could have been made, until the relative, Frederick Vincent, took out letters of administration in 1844. His applications for payment have hitherto proved unsuccessful at the treasury of the United States, and he has been referred to Congress for relief.

"That the petitioner is entitled to interest, will appear by the resolution of Congress, of July 3, 1784: 'That an interest of six per cent. per annum shall be allowed to all creditors of the United States, for supplies furnished, or services done, from the time that payment became due.'—(Journals of Old Congress, 4th vol., page 443.) In addition to this, there are numerous precedents wherein the Congress, in similar cases, have granted relief by ordering payments of principal and interest in like manner as if the said outstanding debts of the United States contracted during the revolutionary war, had been subscribed to the loan, under the act of August 4, 1790, before cited.

Of these precedents of acts for relief of persons in like cases, very many are cited by the petitioner, with reference to the times of their passage, the persons in whose favor passed, and the pages in the fourth volume of the Statutes at Large (by Peters) where those acts may be found.

"Your committee are unanimously of opinion that the claim is justly due, and ought to be paid, and report a bill herewith to that effect."

It was again submitted to the 33d Congress, and a report setting out the same facts, but restricting the payment of interest to the time of the first application for payment. In this shape it passed the Senate. In the House of Representatives it was amended by striking out the interest, and annexing the proviso, "that the same shall be received in full of all demands against the government on this amount." In this shape it was returned to the Senate, the amendment agreed to, the act passed, was approved, and the money paid.

The object of this joint resolution is to repeal this proviso and leave the party to receive the interest due on his debt in the Court of Claims.

The committee are of opinion that the government of the United States ought to pay interest on its just debts, whenever it is in default; but a government is not bound, like individuals, to search out and pay its creditors. It does all that can reasonably be expected if it pays when payment is demanded. If it does not, it is then in default, and should from thenceforward pay interest. In this respect a governmental debt is like an individual debt—payable on demand; no interest is payable until demand is made.

This was the view of the committee in 1855, in recommending and reporting a bill to pay this debt and interest, from the time it was demanded by petition for its payment. They do not think the government should, by an absolute repeal of the proviso in the act, open the question of interest further back than the time when the first application for payment was made, with the evidence of the existence of the debt. They, therefore, report back the bill, and recommend its passage, with the following proviso: *Provided*, That nothing contained in this joint resolution shall be construed to allow any interest on the sum directed to be paid by the said act, beyond the time when the said Frederick Vincent first present his petition to Congress for the payment of the debt due to James Le Case, survivor of Le Case & Mallett.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1857.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill S. 454.]

The Committee on Private Land Claims, to whom was referred Senate bill No. 454, "to confirm the title of Benjamin E. Edwards to a certain tract of land in the Territory of New Mexico," have had the same under consideration, and submit the following report:

On the 16th day of August, 1847, the land commissioners for the county of Bexar, and State of Texas, issued to one Andres Flores a certificate for 640 acres of land as a "head right," of which the following is a copy:

"STATE OF TEXAS, }
County of Bexar. } 640 acres, No. 444, second class.

This is to certify that Andres Flores has appeared before us, the board of land commissioners for said county, and proved, according to law, that he arrived in this State previous to the 1st of October, 1837, and that he is a single man, and has resided in the same three years, and performed all the duties required of him as a citizen, and never having received a certificate for the quantity of land now applied for, he is entitled to six hundred and forty acres of land.

Given under our hands and the seal of the county court at San [L. s.] Antonio, this 16th day of August, A. D. 1847.

THOMAS WHITEHEAD,

Chief Justice and ex-officio Pres't Board Land Comm'rs.

JAMES B. LEE, }
WM. SMALL, } Commissioners.

Attest: THOS. H. O. S. ADDICKS,

Cl'k County court Bexar county, ex-officio Cl'k B. L. Comm'rs.

By BEN. E. EDWARDS, Deputy."

The said Andres Flores, by deed dated the 17th day of August, 1847, conveyed all his right and title to said certificate (No. 444) to Benjamin E. Edwards, who caused the said certificate to be located upon a certain tract of land within the Bexar land district, and a survey thereof to be made on the 8th of September, 1849, as appears from

duly certified copy of the original survey, which is in the words and figures following, to wit:

"STATE OF TEXAS, }
District of Bexar, } *Survey No. 16.*

"Field notes of a survey of 640 acres of land, made for Benjamin E. Edwards, assignor of Andres Flores, it being the land to which he is entitled by virtue of a certificate No. 444, 2d class, for 640 acres of land, issued by the board of commissioners of Bexar county to Andres Flores, dated August 16, 1847, said survey containing a salt lake or saline, known as the 'Salina de San Andres,' or 'Salina del Cerro Redondo,' and lying between the Sacramento and Organ mountains. Said survey is No. 16, in section No. 15, situated on the east side of, and about five miles from, the Cerro Redondo, and N. 6° E., 57 miles from the springs known as San Nicholas Springs, beginning at a point N. 3¼° E. 116 miles, 1,140 varas from a stake set at the ferry north of the town of El Paso del Norte, on the road between said town and Santa Fé, being the southwest corner of survey No. 1, made by M. B. Hays, a stake and mound for southwest corner of this survey; thence N. 1¼° E., 1,100 varas across the wagon road to said saline; salado, marked E, for northwest corner of this survey, from which a musquite, two inches diameter, bears N. 48¼°, E. 16 varas; thence S. 88¾° E. 1,900 varas, to a post marked $\frac{\times}{\text{—}}$ for northeast corner; thence S. 1¼° W. 1,900 varas, to a stake and mound for southeast corner of this survey; thence N. 88¾° W. 1,900 varas, to the place of beginning, bearing marked $\frac{\text{—}}{\text{—}}$.

"Surveyed September 8th, 1849.

"JAS. B. ROBERTS, }
 "JAS. R. SHIPMAN, } *Chain-carriers.*

"I, R. S. Howard, deputy surveyor of Bexar district, do hereby certify that the survey designated by the foregoing plat and field notes, was made according to law; and that the limits, boundaries, and corners of the same, together with the marks, natural and artificial, are truly described therein.

"R. S. HOWARD,
"Deputy Surveyor, Bexar District."

"SAN ANTONIO, November 30, 1849.

"I, James S. McDonald, district surveyor of Bexar district, do hereby certify that I have examined the foregoing plat and field notes, and find them correct, and that they are recorded in my office in Book A, No. 5, page 257.

"J. S. McDONALD,
"District Surveyor of Bexar District."

The lands embraced within the above plat and survey are within the Territory of New Mexico, and the claimant asks Congress to confirm his title to the said tract of land. To understand fully this case, it is necessary to refer briefly to the history of that part of the Territory in which this tract of land is situate.

By the act of congress of the republic of Texas, approved December 19, 1836, the western boundary of Texas was declared to extend to the Rio Grande river. By a map prepared under the direction of the war office, from the most reliable authorities, in 1844, the Rio Grande, also, is laid down as the western boundary of Texas. After the annexation of Texas to the United States this government recognized and maintained the boundaries of Texas as defined by the said act of congress of the republic of Texas of December 19, 1836. Under and by virtue of the act of Congress approved September 9, 1850, the district of country in which this land is situate was acquired by the general government from the State of Texas. The action of the government subsequent to the annexation of Texas has conceded that the jurisdiction of Texas included the territory in question prior to the relinquishment of the same to the United States; so that, from the date of the certificate from the board of commissioners to a period beyond the location and survey of this tract of land, this part of the territory of the State of Texas was subject to location and settlement under authority from said State.

The committee, therefore, find that the State of Texas, having the jurisdiction, did, by its proper officers, issue a certificate of location, No. 444, to Andres Flores, and that the same was located and surveyed prior to the relinquishment of title by the State of Texas to the general government, and that the claimant only required a patent from the State of Texas, to which he was legally entitled, to form a complete and perfect title to the said tract of land.

The legislature of Texas, by an act approved December 2, 1850, required the commissioner of the general land office of the State of Texas to issue patents for certain lands therein named, included in which was the tract of land in question. But the State of Texas having, prior to the passage of the said act, relinquished her title to the territory in which this tract of land is situate, a patent issued under the said act would have been of no validity, for the title that had theretofore been in the State of Texas had passed to the government of the United States.

The claimant had an equitable or inchoate title under the State of Texas, and the question whether this government is bound by law and good faith to confirm such inchoate titles in a territory acquired from another power, which such power, under the laws, usages, and customs thereof, would have confirmed had such territory continued in their possession, is a question so well settled, both by the laws of nations and the decisions of the Supreme Court of the United States, (see 4 Peters, 512; 7 Peters, 87, and 10 Peters, 330,) that your committee do not deem it necessary to discuss the question.

The government of the United States, by virtue of said act, approved September 9, 1850, having become possessed of the territory in which the tract of land is situate, is therefore bound to confirm the title of the petitioner to the same extent as the State of Texas would have done, had she continued in possession thereof.

The committee therefore report back the bill without amendment, and respectfully recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1857.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill H. R. No. 355.]

The Committee on Private Land Claims, to which was referred House bill No. 355, "An act for the relief of Napoleon B. Gill, of Perry county, Missouri, and for other purposes," have had the same under consideration, and submit the following report:

This bill proposes to restore to market certain lands in the State of Missouri reserved from sale, and surveyed as the private claim of Martin Fenwick in the year 1824, and to authorize said Gill to enter, at one dollar and twenty-five cents per acre, certain portions of said lands.

On a petition from Martin Fenwick, referred to the Senate Committee on Private Land Claims at the last session, your committee reported a bill, which passed the Senate, and is now pending before the House of Representatives, providing for a confirmation of the title of said Fenwick to a part of the lands embraced within the reservation, and authorizing him to enter, at the rate of one dollar and twenty-five cents per acre, the remainder of such reservation yet unsold.

It is proposed by the bill under consideration to authorize said Gill to enter the same tract of land within said reservation, which is confirmed to the said Fenwick by the bill of the Senate now before the House of Representatives.

The report of the House Committee accompanying said bill No. 355, falls into error in alleging, as one of the reasons to sustain said bill, that said Fenwick had abandoned the prosecution of his claim.

For the facts and history of the Fenwick claim, the committee refer to their report (No. 178, 1st sess. 34th Cong.) submitted by Mr. Benjamin on the 19th of May, 1856.

The passage of the bill under consideration would do great injustice to the rights of Mr. Fenwick; the committee therefore report back the bill, and recommend that the same do not pass.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1857.—Submitted and ordered to be printed.

Mr. CLAY made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Anthony W. Bayard, praying Congress to grant him arrears of pension, have had the same under consideration, and beg leave to report:

That the petitioner was placed on the pension list at the full pay of a private soldier of eight dollars per month, on the 11th day of February, 1844. By special act of Congress, February 24, 1855, his pay was increased to twenty dollars per month, to commence from January 1, 1852.

He now asks the passage of a special act to give him the same pay he now draws of twenty dollars per month, or two hundred and forty dollars per annum, from the time of his discharge from service, in the war of 1812, to the date of the beginning of his present pension, a period of more than forty years, making a sum of near ten thousand dollars.

The committee cannot approve the prayer of the petitioner, and therefore report the following resolution, and recommend its adoption:

Resolved, That the prayer of the petitioner, Anthony W. Bayard, be rejected.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1857.—Submitted, and ordered to be printed.

Mr. GREEN made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Philip Willhoit, of Tennessee, praying Congress to grant him a pension, beg leave to report :

That after a careful examination of the evidence adduced by claimant, your committee are unanimously of the opinion that the evidence is incomplete, and the application does not come within the purview of special legislation. They therefore recommend the adoption of the following resolution :

Resolved, That the application of Philip Willhoit for a pension be rejected.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1857.—Ordered to be printed.

Mr. GREEN made the following

REPORT.

[To accompany bill S. 551.]

The Committee on Pensions, to whom was referred the petition of Michael Kinney, praying to be allowed a pension, beg leave to make the following report:

It appears that the petitioner, Michael Kinney, enlisted at Boston, July 6, 1849, and was honorably discharged, July 6, 1854, at Fort Bliss, Texas, and was a private in company I, 8th regiment United States army. Subsequent to his discharge, we find the following remarks on a return from Fort Clark, Texas, for the quarter ending September 30, 1854, signed by Basil Norris, assistant surgeon of the United States army, now on file in the Surgeon General's office: "On the first of August I amputated the thigh of a teamster for gunshot wound through the knee joint; the patient was nursed by our attendants, and recovered with a good stump." It also appears that the petitioner was regularly employed in the quartermaster's department, and that while engaged in unloading a wagon, he received the wound above referred to. There is in evidence before your committee that said Michael Kinney was a man of unexceptionably good character during all the time he was connected with the public service. Your committee, therefore, deem the petitioner's case one worthy of the favorable consideration of Congress, and report the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1857.—Ordered to be printed.

Mr. GREEN made the following

REPORT.

[To accompany bill S. 552.]

The Committee on Pensions, to whom was referred the petition of Jeremiah Pendergast, praying for an increase of pension, beg leave to report:

That it appears, from the evidence before the committee, that said petitioner was disabled while engaged in the military service of the United States, and in the line of his duty, on board the steamer Powhatan, on the 4th day of August, A. D. 1855, and that he has recently been placed on the pension roll at the rate of \$4 per month, which sum is wholly inadequate to his support, on account of his total disability. Therefore, your committee recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1857.—Ordered to be printed.

Mr. EVANS made the following

REPORT.

[To accompany bill S. 554.]

The Committee on Revolutionary Claims, to whom was referred the petition of the legal representatives of Charles Porterfield, deceased, having had the same under consideration, submit the following report:

In May, 1779, the legislature of Virginia passed an act establishing a land office for ascertaining the terms and manner of granting waste and unappropriated lands.

Under this act, any person might procure from the treasury, on paying a certain price, a warrant to locate and obtain a patent for any waste or unappropriated land, with a proviso that no entry or location of land shall be admitted within the country and limits of the Cherokee Indians, or on the north side of the Ohio river, or on lands reserved for any particular nation or tribe of Indians, &c. The warrants under this act were called treasury warrants.

It having been ascertained, by an extension of the dividing line between Virginia and North Carolina, that a considerable part of the land previously set apart by Virginia for the discharge of her promises to her officers and soldiers of her State and continental line lay within the State of North Carolina, Virginia, by an act passed in November, 1781, enacted that all that tract of land included within the rivers Mississippi, Ohio, and Tennessee, and the North Carolina line, shall be, and the same is hereby, substituted in lieu of such land so fallen into the State of North Carolina, to be in the same manner subject to the claims of said officers and soldiers.

Colonel Charles Porterfield, of the Virginia State line, was mortally wounded at Gates' defeat, near Camden, in August, 1780, and soon after died of the wounds, leaving neither wife nor children. His brother, Robert Porterfield, as his heir-at-law, received from the State of Virginia, under the laws of that State, a warrant for 6,000 acres (for three years' service) in December, 1782. He also was entitled, by purchase, to a warrant issued to Thomas Quarles, for three years' service as lieutenant in the State line, for 2,666 $\frac{2}{3}$ acres, dated the 12th of June, 1783.

In pursuance of these warrants, and under the authority of laws subsequently passed, appointing a surveyor and a board of officers, the said Robert Porterfield, in August, 1784, made, within the district above described, five entries, amounting in all to 6,133½ acres; but the country was in the possession of the Indians, who were so much dissatisfied with the inroads into their country, and the location of so large an amount of these warrants, that an Indian war was apprehended. The governor of Virginia, on the 6th of January, 1785, under the direction of the legislature, issued a proclamation, prohibiting those who had made entries of land within the said Territory from proceeding further in taking possession or surveying the land, and commanding the commissioners, surveyors, and all persons to withdraw from the said land. In consequence of this proclamation, the said Robert Porterfield was prevented from perfecting his entry by survey and patent. This proclamation continued in force until the United States, by treaties made subsequently in 1794 and 1795 with the Cherokee and Chickasaw Indians, the country lying to the south of the Tennessee river was guarantied to them as a hunting ground, and all persons were prohibited from entering on, or taking possession of, the said territory.

The country remained in this situation until 1819, when the obstruction of the Indian title was removed by treaty; and in convenient time afterwards, to wit: in 1824, the said Robert Porterfield procured his entries, to be perfected by survey, and a patent issued to him from the governor of Kentucky, which had, in the meantime, become a State, in pursuance of certain stipulations between Virginia and Kentucky, when the latter became a separate State.

After having thus perfected his title, the said Robert Porterfield took possession of his said land, and by an agent granted leases to several persons whom he found living on the land; but these tenants were subsequently evicted and turned out of possession, under indictments of forcible entry and detainer, by persons claiming title to the same land, under a grant to George R. Clark, of an older date. To the understanding of this claim it is necessary to state some facts.

Under certain treasury land warrants, the said George R. Clark made entries of two tracts of land—one for 36,962 acres, and another for 37,000 acres—within the district of country which the legislature of Virginia had set apart for military land warrants by the act of November, 1781. These entries were made in 1780 and 1781, prior to the passage of the act of November, 1781. The surveys were made in 1784, before the date of the proclamation of the governor of Virginia, and patents were issued in September, 1795.

The said patents being the oldest, the said Robert Porterfield was disposed to give up his claim, and to ask Congress to give him other lands in lieu of that of which he had been deprived. He accordingly presented a petition to the 24th Congress; but, as is alleged in this petition, he was advised by the late B. Watkins Leigh, then a senator of Virginia in Congress, that his claim would be likely to be refused, until it had been decided by the courts. That Clark's title was paramount; and the said Leigh expressed the opinion, as did other eminent lawyers, that the entry and patent of the said Clark was void,

being within "the country and limits of the Cherokee Indians," which were excepted from entry by act of May, 1778. Under this advice, he filed a bill in the circuit court of the United States for the Kentucky district, against Meriwether L. Clark, and others, who claimed under the said grants to George R. Clark, on the 18th of July, 1836.

In the prosecution of this suit much time and money were expended. Many witnesses were examined, and a large amount of testimony as to the right of the Indians to this tract of country was procured from the colonial office in England. After various continuances, the case was finally brought to a hearing on the 13th November, 1841, when the bill was dismissed with costs. An appeal was taken to the Supreme Court, where the appeal was dismissed.

Under these circumstances, your committee are of opinion, that as as the Virginia grant of the land was in pursuance of a contract made with her officers, she would be bound to reimburse to her grantee the land which he lost by the uncertainty of her own laws. And as Virginia, by her cession of all her lands to the United States, has not now the means of complying with the contract, the United States ought to do for them what Virginia would now do if she had the power; and as there is still remaining a large part of the 2,500,000 acres set apart for the satisfaction of Virginia military land warrants by the act approved August 31, 1852, a bill is herewith reported for their relief.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1857.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany bill S. 555.]

The Committee on Naval Affairs, to whom was referred the memorial of J. Wilcox Jenkins, have had the same under consideration and report :

The memorialist alleges that he acted as captain's clerk on board the United States sloop-of-war Germantown during the year 1856, and while so acting he was appointed acting purser by the commodore commanding the squadron, and that he performed the duties of purser of, and on board the Germantown, from the first day of January, to the thirtieth day of April, 1856, under and by virtue of said appointment; and he prays to be allowed "*the compensation of a purser of a first class sloop-of-war during the time he performed the duties thereof.*"

Upon a reference of the case to the Navy Department for the evidences of the service in question, the Secretary transmitted the following letter from the Fourth Auditor :

"TREASURY DEPARTMENT,
"Fourth Auditor's Office, January 5, 1857.

"Purser Latnall having been detached from the United States sloop Germantown, J. Wilcox Jenkins, who was acting as captain's clerk, was appointed as acting purser by G. W. D. Salter, commander-in-chief of the squadron, and acted in that capacity from the 1st of January, 1856, until the 30th of April following as appears from the letter of appointment of Captain Salter and the accounts of acting Purser Jenkins, on file in this office for settlement.

A. O. DAYTON,
Fourth Auditor."

Upon this proof your committee report a bill for the relief of the memorialist, allowing him the pay of a purser of a sloop-of-war during the time he acted as such, *deducting therefrom the amount he may have received as captain's clerk*, and they ask the concurrence of the Senate therein.

absence from home of some two or three years, he died in the city of New York, leaving his widow and six small daughters in indigent circumstances to lament the loss of a husband and father. It is further clearly shown that the memorialist has no visible means of support, and is represented to be very worthy of the relief for which she humbly prays the government to grant her in her declining years.

Your committee therefore recommend the passage of the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 5, 1857.—Ordered to be printed.

Mr. PRATT made the following

REPORT.

[To accompany bill S. 559.]

The Committee on Foreign Relations, to whom was referred the resolution of the Senate of the 19th December, 1856, with the accompanying papers, relative to the claim of John P. Brown, principal interpreter of the Turkish language to the United States legation at Constantinople, for additional compensation, for diplomatic and judicial services performed by him at various intervals during the years 1838, 1839, 1852, and 1854, have had the same under consideration, and report:

The Secretary of State, to whom the resolution was referred by the committee for information, in his reply, dated January 30, 1857, says: "As to the services of Mr. Brown, as chargé d'affaires from the 11th of April, 1838, to the 19th of July, 1839; from the 30th of July, 1852, to the 5th of July, 1853, and from the 19th of December, 1853, to the 31st of January, 1854, the records of this department show that during those periods he was left in charge of the legation, and that he performed the duties devolved upon him in a manner satisfactory to this government."

In regard to the claim for compensation for judicial services under the act of August 11, 1848, the Secretary adds: "That act has never been construed by the Executive as intending to allow diplomatic agents and consuls in Turkey compensation for such services."

Concurring with the Secretary in his construction of the act of August 11, 1848, the committee are of opinion that Mr. Brown is not entitled to the compensation claimed by him for judicial services during the several periods named in his accounts; and they therefore recommend that that portion of his claim be disallowed. The claim for diplomatic services, however, stands upon different grounds; and being fully supported by the records of the Department of State, entitles him, in the opinion of the committee, to the difference between the compensation heretofore received by him as principal interpreter, and that allowed to a chargé d'affaires of the United States. They therefore report a bill in his favor for that amount, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 5, 1857.—Ordered to be printed.

Mr. IVERSON made the following

REPORT.

[To accompany bill S. 563.]

The Committee on Military Affairs, to whom was referred the petition of Wm. W. Belden, heir of Ebenezer Belden, having had the same under consideration, report:

The petitioner in this case prays to be reimbursed for losses sustained by his father, Ebenezer Belden, by the destruction of his stock of goods by the enemy, at Buffalo, New York, on 19th of December, 1813, when the storehouse occupied by him at that place was so destroyed because it was partially occupied at the same time by military stores.

This claim was presented to the House of Representatives in the second session of the 15th Congress, but no final action was ever had upon it. On the 9th of April, 1816, Congress passed a law, "authorizing payment for property lost, captured, or destroyed by the enemy, while in the military service of the United States." The ninth section of this act required that evidence should be provided that the property so destroyed, and for which payment was promised, was in military occupancy under the authority of an officer or agent of the United States, and a commissioner was appointed to take testimony and administer the law. Numerous cases were presented to this officer, and this one among them, and the testimony is taken before and certified by him. The law, however, was construed to extend only to houses, &c., and goods, wares, and merchandise, as charged in Mr. Belden's account, were in no instance paid for. The report of all the cases presented for settlement under the act of April, 1816, may be found in Senate Document No. 36, second session, 19th Congress.

Michael Helms testifies that the store occupied by Ebenezer Belden, at the time and place as stated above, was destroyed as alleged, whilst it was also occupied as a military dépôt by the United States.

Ezra St. John testifies to the fact that the storehouse of Ebenezer Belden was also a dépôt for tents and other articles belonging to the United States, at the time it was destroyed.

Nathan Leonard, late a captain in the United States service, testifies that the storehouse of Ebenezer Belden, at the time of its destruction

by the enemy, was also in the military occupancy of the United States, as a depository of forage, by the order of the United States quartermaster general.

Stephen Sparrow testifies to the same, and states that he believes the property was so destroyed in consequence of its military occupancy; and further, that he was, on the said December 19, 1813, the clerk or agent of said Belden, and that the goods and effects as charged in the account accompanying said Belden's memorial were in the said Belden's store, and were therein destroyed, and that the said goods are charged at New York prices with transportation added.

John Lay, jr., testifies that he was a merchant, and well acquainted with the prices of goods, and that the prices charged in Ebenezer Belden's schedule of goods destroyed by the enemy in December, 1813, are reasonable and fair.

Reuben B. Heacock, also a merchant, in Buffalo, fully corroborates the testimony of John Lay, jr.; and Archibald S. Clarke testifies that he has known Ebenezer Belden as a regular merchant of respectable standing since 1808, until the destruction of the Niagara frontier in the winter of 1813.

From a review of this testimony it is manifest that Ebenezer Belden's property was destroyed in consequence of its being upon premises occupied in part as a military depot, and such occupancy was by the order of an officer of the United States. There are numerous precedents on record of payments for losses sustained under similar circumstances, and there seems to be as much justice in providing for the payment of goods so destroyed as for houses, as authorized by the act of April, 1816, and the committee report a bill to pay the memorialist's claim.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1857.—Ordered to be printed.

Mr. WELLER made the following

REPORT.

[To accompany bill S. 564.]

The Committee on Military Affairs, to whom was referred the memorial of John T. Wright, having had the same under consideration, report:

The memorialist prays compensation for the destruction of his steamer, the "America," while employed by him in transporting United States troops, and to be allowed the contract price for such transportation.

It appears that the memorialist—the owner of the "America"—contracted with Brevet Major B. Allen, assistant quartermaster United States army, to convey a detachment of United States troops, under command of Major H. Prince, from Benicia, California, to Steilacoom, Puget's Sound. That the said steamer started from Benicia about the 21st June, 1855, having on board a number of passengers, and Major Prince, with one hundred and thirty-two recruits and three laundresses. Immediately upon leaving Benicia, the memorialist informed Major Prince that the recruits were very disorderly, and were using very unbecoming language, loudly protesting against being taken to Washington Territory, and that he (the captain) had great fears that these recruits would injure the steamer or get up a mutiny. Captain Wright did all in his power to keep these troops in subjection, but they seemed to be preparing for quitting the steamer, and acted in a very suspicious manner.

Arriving at Crescent City, Major Prince went ashore in the first boat; and while the freight for this place was being delivered, a dense smoke was seen issuing from that part of the steamer occupied by the recruits, and they were found all ready for landing, and jumping into a lighter alongside, made for land; nor could they be induced to aid in extinguishing the fire, although a large reward was offered them to do so. The steamer was burnt and utterly lost; and it appears from all the evidence (voluminous as it is) before the committee, and being the best the nature of the case will admit of, that the fire was put to the steamer by these dissatisfied recruits, as neither smoke nor fire was discovered to arise from any other part of her except that occupied by them, and tins of camphene oil had been stolen from the

deck, which were found in the place of the fire's origin after the hull had been raised from water.

Major Prince certifies that the burning of the "America" was not owing to any fault of Captain Jones, and that his contract was faithfully and well fulfilled as far as respects the landing of the detachment at Crescent City. Captain Jones offered to procure another steamer and convey the troops to Steilacoom, according to contract, but the offer was declined. Meanwhile many of the recruits had run away to the mines, or had otherwise deserted in disguise.

The committee have given to this case a very careful examination, and have come to the conclusion that, although the circumstantial evidence may be very satisfactory, the burning of the "America" was caused in the manner above stated, the government is in no way bound to remunerate the owner therefor. The steamer was a common carrier, was not even chartered on this occasion by the government, and it is but reasonable and just that the loss should fall upon the proprietor, and not upon the United States. But the committee, believing that the memorialist did his utmost to carry out his contract in good faith, recommend that he be paid in the same manner as if he had delivered Major Prince and his command at the place of destination, and accordingly report a bill for his relief.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1857.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill S. 565.]

The Committee on Private Land Claims, to whom was referred the "petition of John H. Chevis and others, praying confirmation of the original entry of Alexander Moliere, deceased, to a certain tract of land in Louisiana," have had the same under consideration, and submit the following report :

It appears that said Alexander Moliere, in his lifetime, on the 11th day of March, 1842, entered, at the land office at Opelousas, in the State of Louisiana, (as is shown by a duly certified copy of the register's certificate, numbered 4,036,) the southwest quarter of section number nine, in township number eleven south, of range number five east; that some time prior to 1845, and whilst the land was owned by said Moliere, he made application to the land office for a change of his entry from the said southwest quarter of section nine to the southwest quarter of section eight, in the same township and range. The Commissioner of the General Land Office ordered the change to be made on the books of the register of the land office at Opelousas, but, owing to the negligence or omission of the said register, the change of entry so ordered was never made, as appears from the certificate of the said register dated the 12th day of November, 1856.

On the 23d day of December, 1855, the said southwest quarter of section 8 was entered by one H. T. Chevis in the land office for the State of Louisiana, of which the State became possessed by virtue of the provisions of the act of Congress of the 20th day of May, 1826, as appears by the original certificate of the register of the land office.

It further appears, from a duly authenticated certificate of the recorder for the parish of Lafayette, in the State of Louisiana, that John W. Chevis, the petitioner, is the owner of, and is entitled to, all the rights of the said Moliere in and to the said southwest quarter of section 9, township 11 south, of range 5 east, and on application at the Land Office for the patent therefor the Commissioner, refused to grant the patent on the ground that a change of entry had been ordered from the said southwest quarter of section 9 to the said southwest quarter of section 8, and that the petitioner was remediless unless he invoked the interposition of Congress.

The petitioner asks now that the original entry made by the said Moliere of the said southwest quarter of section 9 be confirmed, and that a patent issue to him as the legal representative of said Moliere.

From all the facts in this case, the committee are of opinion that the prayer of the petitioner ought to be granted; they therefore report the accompanying bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1857.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill S. 473.]

The Committee on Private Land Claims, to whom was referred Senate bill 473, "A bill to provide for the location of certain private land claims in the State of Missouri, and for other purposes," after a careful consideration thereof, have directed me to report a substitute therefor.

The bill under consideration provides for the location of certain confirmed private land claims, and for the confirmation of certain other claims recommended for confirmation by the board of commissioners appointed to adjust private land claims under the act of March 2, 1805, and the acts supplementary thereto.

By the first section of the act entitled, "An act confirming claims to land in the State of Missouri, and for other purposes," approved July 4, 1836, all claims reported upon favorably by the commissioners, and embraced within the two several reports therein named, were confirmed, with the exception of certain claims therein specified.

The second section provides, "that if it shall be found that any tract or tracts, confirmed as aforesaid, or any part thereof, had been previously located by any other person or persons, under any law of the United States, or had been surveyed and sold by the United States, this act shall confer no title to such lands in opposition to the rights acquired by such location or purchase; but the individual or individuals, whose claims are hereby confirmed, shall be permitted to locate so much thereof as interferes with such location or purchase on any unappropriated lands of the United States within the State of Missouri, or territory of Arkansas, in which the original claim may be, that may be subject to entry at private sale."

The 3d section provides the manner in which such location shall be made, and for the issuing of the patent.

Under this confirmatory act, the claim of the sons of Benito Vasquez was confirmed. Subsequent to such confirmation, the interest of Joseph Vasquez, one of the confirmees, became vested in one J. Epes Cowan, who took possession under it of a certain tract of land in Missouri, then unsurveyed. After the survey, the said Cowan made application to the General Land Office for a patent, under the

2d and 3d sections of the said act of July 4, 1836. The Commissioner, entertaining doubts upon the question, referred the same to the Attorney General, and on the 5th of February, 1841, Attorney General Gilpin gave his opinion thereon, (see Opinions of Attorneys General, page 1377,) in which he says :

"I am of opinion that the first section of the act in question fully confirms and gives a valid title under the grant to the sons of Benito Vasquez, but I do not think that, without further legislation, the same can be located upon any of the public lands of the United States. This can never be done except by authority from the legislature and the law in question ; though it confirms the grant, does not provide for its location. The first section is certainly nothing more than confirmatory of certain Spanish claims. It is in the second and third sections that the power to locate them is given, if anywhere. What is that power? It is to locate 'tracts' confirmed by the first section, and tracts 'lying within the State of Missouri or the Territory of Arkansas.' If such confirmed 'tracts' interfere with lands already surveyed and sold by the United States, provision is made for their location elsewhere. It seems to me impossible to regard these provisions as applicable to any grants but such as have already had a *specific location* ; they cannot be applied to *floating* and *unascertained* claims—mere rights of location, such as the grant to the sons of Benito Vasquez is, even though they are valid and confirmed. All the claims confirmed by the first section, except a very few, were located Spanish grants ; for them the second and third sections of the act adequately provide ; for the others no provision is made, *doubtless, from accident* ; but the omission is one that can *only be rectified by the legislature.*"

By special act, approved January 12, 1855, the legal representatives of the said sons of Benito Vasquez, as also John Colligan, were authorized, respectively, to enter a quantity of land equal to that confirmed to them by the said act of July 4, 1836, and at the 1st session of the present Congress an act was passed authorizing the legal representatives of Manuel Gonzales Moro, whose claim was similar in all respects to the Vasquez claim, to enter a quantity of land equal to that confirmed by said act and that yet remained unsatisfied.

To avoid these special acts, as well as to do justice to all confirmees of the United States, and to meet the objections of the Attorney General as above set forth, the committee believe that this general provision should be made. The only difference between the provision under consideration and the evident intention of the act of 1836 is, to extend to the confirmees the right to make the location on any of the public lands of the United States, subject to sale at private entry at a price not exceeding one dollar and twenty-five cents per acre, whilst by the said act such confirmees were intended to be confined to the State or Territory in which the original claim was situated. This change the committee believe is due to the claimants, as it will, to some extent, place them in the position of securing such lands as they might have selected in 1836, had ample provision been made by said act.

In reference to the confirmation provided by this bill, the committee

find that a large number of claims reported for confirmation by the commissioners appointed under the act entitled "An act for ascertaining and adjusting the titles and claims to lands within the Territory of Orleans and the district of Louisiana," approved March 2, 1805, and the several acts supplementary thereto and embraced in the report of the Secretary of the Treasury dated the 8th day of January, 1812, and communicated to the House of Representatives on the 9th day of January, 1812, (see Am. State Papers, Public Lands, Duff Green's edition, volume 2, pages 224 to 367, inclusive,) have not been confirmed by Congress.

It has been generally understood that all the claims recommended for confirmation in the report aforesaid were confirmed by the act entitled "An act for the final adjustment of land titles in the State of Louisiana and Territory of Missouri," approved April 12, 1814; but upon a careful examination of said act, it is found that conditions were attached which excepted from this general confirmatory act many claims recommended by the commissioners for confirmation. The policy that governed Congress in passing a confirmatory act, with the conditions therein expressed, is not appreciated by your committee. By it they omitted to confirm many of the most meritorious claims, which, after a careful examination, were recommended by the commissioners for confirmation.

For instance: under the first proviso to the first section a greater quantity than one league square could not be confirmed to the claimant, although he may have been justly entitled to a greater quantity; and no confirmation could be made to any claimant in his own right if such claimant had received a donation grant from the United States in the said Territory. In the first section there are certain other conditions, which were unnecessary, to determine the legal rights of the claimants. For if, under the treaty stipulations, the claimant was entitled to a confirmation of his title, it was unjust, if not incompetent, for Congress to attach conditions which would defeat the confirmation. Under the said first section it was required that the claimant must have been a resident within the territory at certain specified times; therefore a bona fide claimant, resident of any of the States, was defeated in his claim.

The lands covered by the claims reported by the commissioners for confirmation were expressly reserved from sale by the act providing for the appointment of the commissioners, and such reservation has continued up to the present time.

Most, if not all, of the claimants whose titles would be confirmed by this bill have been in possession of the lands claimed from the date of the concession up to the present time, and many have made lasting and valuable improvements thereon. These last considerations alone would induce the committee to be liberal to the claimants within the true policy of the government; but when taken in connexion with the fact that these claims had undergone a careful and full investigation and were recommended for confirmation, the committee feel that a duty devolves upon Congress to confirm the claimants in their titles.

At the first session of the 18th Congress the House Committee on Public Lands made a report upon certain resolutions in relation to

lands in the State of Louisiana, (see Am. State Papers, vol. 3, p. 557,) in which they say: "The second resolution instructs your committee to inquire into the expediency of causing patents to issue for lands to persons within the State of Louisiana, *whose titles and claims to lands have been confirmed by the several boards of commissioners*, acting under the authority of the United States. By referring to the act of the 8th (12th) of April, 1814, it will be found that it is made the duty of the registers of the several land districts in Louisiana to furnish the principal deputy surveyor of that district with the list of confirmed private claims; and it is also made the duty of such principal deputy, under the direction of the surveyor, south of Tennessee, to survey those claims at the expense of the United States; which surveys are required to be returned to the Commissioner of the General Land Office, with the certificates of confirmation, whose duty it is made to make out the patents and forward them to the registers for the use of the claimants. From this statement it will appear that if any unaccountable or unreasonable delay has occurred in issuing the patents to lands in Louisiana, *it cannot be attributed to any want of legislation* on the part of Congress. Nor are the committee in the least disposed to fix censure upon any one; but in the absence of all other evidence, except the mere want of performance of the duties required by law, feel themselves bound to presume that the delay in issuing patents has proceeded from the unsettled state of private claims to land in Louisiana, or from causes not heretofore evitable. This they feel the more inclined to do, as they find a confirmation of private claims on an examination made but a short time previously to such confirmation at the last session of Congress."

From this report it would appear that the committee regarded the delay in issuing patents under the confirmatory act of 1814 to the complicated and unsettled state of private land claims in Louisiana, and not from want of any legislation on the part of Congress.

The committee find, by referring to the several confirmatory acts of Congress, that all claims recommended for confirmation by the several boards of commissioners were confirmed in a body as embraced in the report, unless the claim, either by the name of the claimant or by the number of the claim, was specially excepted from confirmation, with the exception of the confirmatory act of 1814. By excepting the claim in the name of the claimant or by the number, such claimant had notice that his claim was not confirmed; but by the act of 1814, years must elapse before the claimant could ascertain whether his title was confirmed or not.

The claimant would naturally conclude, after he had learned that the board of commissioners had recommended his claim for confirmation, and that a confirmatory act had been passed by Congress, and his claim not specially excepted by name or number, that his claim, with the rest, stood confirmed.

In some instances the committee find that years have elapsed after the report of the commissioners, and after the same had been laid before Congress, without any action of Congress thereon. The report of the commissioners upon private land claims in the western district of Louisiana, dated the 30th of December, 1815, and laid before Con

gress in 1816, was not passed upon by Congress until the confirmatory act, approved February 5, 1825. Thus, after nine years had passed away, Congress took up the report and confirmed all the claims in a body therein recommended for confirmation.

The committee, under the circumstances, have no hesitation in recommending that these claims, confirmed by the said commissioners, ought to be confirmed, to the extent provided in the bill, by Congress.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 6, 1857.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany bill S. 568.]

The Committee on Pensions, to whom was referred the petition of Moses Olmstead, praying Congress to grant him arrears of or increase of pension, beg leave to report :

That it appears from the petition of said Olmstead, as corroborated by statement of the Third Auditor of the Treasury Department, said Olmstead entered the service of the United States, in Jacob Howell's company, New York militia, and was discharged November 26, 1814. Petitioner introduces the testimony of Professor W. Parker, of the College of Physicians, New York, and John Frederick May, professor of surgery, National Medical College, Washington city, D. C., to establish the permanency of an injury received at Harlem Heights, while laboring on a battery, and engaged in the line of his duty. It also appears, that by act of Congress June 29, 1854, he was placed on the pension list, at the rate of \$8 per month, to commence 20th January, 1853. Petitioner now comes forward and claims, that in consequence of having been compelled to have his thigh amputated by reason of his wounds becoming so painful that his health and life were endangered thereby, petitioner prays Congress to grant him arrears of pension for eight or ten years prior to 20th January, 1853, or an increase of the pension he is now receiving, to aid him to support his family and himself in his now state of disability. Your committee, after carefully examining the evidence, therefore report the accompanying bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.



FEBRUARY 6, 1857.—Ordered to be printed.

Mr. FISH made the following

REPORT.

[To accompany Joint Resolution S. 32.]

The Committee on Naval Affairs, to whom was referred the petition of Lieutenant William F. Lovell, of the United States navy, praying that additional compensation may be paid to the officers and seamen who accompanied the expedition in search of Dr. Kane, and to whom was re-committed Senate joint resolution, No. 32, authorizing the Secretary of the Navy to pay to the officers and seamen of the expedition in search of Dr. Kane, the same rate of pay that was allowed the officers and seamen of the expedition under Lieutenant De Haven, have had the same under consideration, and report :

That the joint resolution which has been re-committed to them is found not to reach the object which the committee had in view when it was reported. This arises from the fact that there were officers in the expedition in search of Dr. Kane of grades not with De Haven's expedition, and who, therefore, are not provided for by the joint resolution as heretofore reported.

The committee propose to amend the joint resolution so as to include these officers within its provisions.

In recommending the adoption of this amended resolution, the committee do not favor the allowance of increased compensation on the ground of precedent, upon which so many applications have been made. This expedition was peculiar, and required an outfit of stores, provisions, clothing, &c., suited to the extreme regions of the arctic seas, and, in a large degree, unsuited for the ordinary service of the navy.

It went on its errand of humanity, uncertain how long it would be absent in the inhospitable regions to which it was sent. The cruise was expected to occupy a long time. Large supplies were laid in, and large expenditures were consequently thrown upon the officers, which the fortunately unexpected termination of the cruise rendered unavailable.

The expedition, learning the safety of Dr. Kane, returned to the United States with a large proportion unexpended of the stores and clothing, &c., which they had been compelled to lay in, in anticipation of a long voyage, and upon these loss was necessarily sustained.

The committee, believing that the officers who engaged willingly and gallantly in this arduous, dangerous, and suffering expedition of humanity should not be burdened with the loss which has thus resulted from the peculiar character and nature of the expedition upon which they were sent, recommend the allowance of increased compensation as an indemnity to these officers, and herewith report said joint resolution with an amendment, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 7, 1857.—Ordered to be printed.

Mr. WELLER made the following

REPORT.

[To accompany bill S. 573.]

The Committee on Military Affairs, to whom was referred the memorial of Major Benjamin Alvord, paymaster United States army, having had the same under consideration, report :

The memorialist prays to be reimbursed for losses sustained by him when wrecked on the steamship "Southerner," on the 27th December, 1854, near Cape Flattery, in Washington Territory.

The claim is sustained by the following affidavits :

Affidavit of Major Benjamin Alvord.

Personally appeared Benjamin Alvord, paymaster United States army, who, being duly sworn, states as follows, to wit : I was directed by orders from the Secretary of War, communicated through the paymaster general, and dated the 26th September, 1854, to proceed from Washington city to my station at Fort Vancouver, Washington Territory. On reaching San Francisco, I proceeded to make a payment of the troops in northern California ; and, after returning, sailed from that city on the 20th December, 1854, on the steamship "*Southerner*," bound to the Columbia river. When a few days out we encountered a severe gale of wind, and the master attempted to make Puget's Sound for safety ; but in this attempt we were wrecked, on the 27th December, on the coast near Cape Flattery rocks, thirty miles south of the entrance to said sound, the vessel and cargo being a total wreck. Preparing for the arrival of my family, I made considerable purchases in San Francisco of household effects, furniture, &c., preparatory to housekeeping. Besides these, I took with me on the steamer several trunks and boxes of clothing, and other property, and, especially, a small but very valuable library. All this property was lost when I was wrecked, and my loss amounted to at least *one thousand dollars*. I had remaining a little clothing in a pair of saddle-bags. With much labor and watching (for they had been washed away) I saved the muster and pay rolls and vouchers of my recent payment, and other valuable public and official documents in my possession. It

is proper to say that, in devoting myself to securing the public service papers, &c., I necessarily neglected, in a great degree, my private property. The interval which we could devote to the rescuing of property from the waves was only a few hours. What the sea did not wash off the Indians stole from us that same night. Six thousand and five hundred dollars of funds of the pay department United States army I had placed on board, in the hands of an express company, for transportation to Fort Vancouver; these were, fortunately, saved and delivered to me at that post. They were in an iron safe, and thus not washed off from the wreck.

BENJAMIN ALVORD,
Major, and Paymaster U. S. Army.

COUNTY OF CLARK, *Territory of Washington*:

Sworn and subscribed to, at Fort Vancouver, Washington Territory, on the 25th day of October, 1856, before me.

C. C. STILES, [L. s.]
Probate Judge.

Affidavit of Ryland J. Ackley, Esq.

Personally appeared before me Ryland J. Ackley, esq., of Fort Vancouver, Washington Territory, who, being duly sworn, states as follows, to wit:

I have been paymaster's clerk for Major Benjamin Alvord, paymaster United States army, since September, 1854. He was ordered in that month from Washington city to Fort Vancouver, Washington Territory. On reaching San Francisco, after making a payment to troops in northern California, we sailed, on the 20th December, 1854, on the steamship "*Southerner*," bound from that city to the Columbia river. A severe gale of wind arose when we were two or three days out, and the captain attempted to make Puget's Sound for safety, but we were wrecked, on the 27th December, 1854, on the coast near Cape Flattery rocks, Washington Territory, thirty miles south of the entrance to said sound. The vessel and cargo were a total wreck. I am knowing to the fact that the said Major Benjamin Alvord, expecting to go to housekeeping at Fort Vancouver, purchased considerable furniture, &c., in San Francisco, and I saw him place on board several trunks, boxes, &c., said to contain books, clothing, and other property. All this property was lost when we were wrecked; and, to the best of my knowledge and belief, his estimate of said loss at *one thousand dollars* is correct and just.

He saved of his private property only a little clothing. Of public property he rescued his official documents, including the pay-rolls and vouchers of his recent payment of the troops. The public funds of the pay department, which he had placed in the hands of an express com-

pany for transportation, amounting to six thousand five hundred dollars, were fortunately saved, being in an iron safe, which could not wash away.

R. J. ACKLEY,
Paymaster's Clerk.

COUNTY OF CLARK, }
Territory of Washington. }

Sworn and subscribed to, at Fort Vancouver, Washington Territory,
on the 25th day of October, 1856, before me.

C. C. STILES, [L. s.]
Probate Judge.

The committee, regarding this claim as just and equitable, report a bill for the relief of Major Alvord, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 7, 1857.—Ordered to be printed.

Mr. WELLER made the following

REPORT.

[To accompany bill S. 574.]

The Committee on Military Affairs, to whom was referred the petition of Dempsey Pittman, having had the same under consideration, report :

At the last session of Congress an act was passed (approved August 16, 1856,) authorizing the Secretary of War "to pay Dempsey Pittman such compensation and allowances as may be found to be justly due him for his military services in Florida in the year 1838: *Provided*, That the amount shall in no case exceed the pay of a colonel of infantry for five months." The evidence then before the committee was satisfactory that the petitioner had served as a colonel of infantry in Florida in 1838, from May to November—five months or more. It is of record in the War Department that Dempsey Pittman served as colonel of infantry during October, 1838, and the affidavit of Quartermaster Thos. M. Brush shows that the petitioner also served the residue of the time for which he claims payment; that the pay-rolls were lost by him, (the said Brush,) and also that Pittman was never paid for any period of his service. With this proof before the committee, and other testimony corroborating it, the bill for the petitioner's relief was reported to the Senate and subsequently passed by both houses of Congress.

The petitioner states that, on the passage of said act, he applied for settlement and payment of his accounts as a colonel of infantry for five months, as provided for in the act. The Second Auditor of the Treasury, the proper accounting officer in the premises, allowed and passed his account as such colonel from 20th May to 19th October, 1838, a period of five months; but the Secretary of War, to whom this decision was referred for confirmation, decided that the petitioner was not entitled to pay and allowances for any longer period than was shown by the evidence in the War Department, viz: for the month of October, 1838. An appeal is therefore taken from the Secretary's decision. The committee are aware that no legislation was necessary to pay the one month's services as shown by the rolls, and they intended, in passing the act referred to above, to allow the petitioner the pay and allowances of a colonel of infantry for five months; and having re-examined this case are fully satisfied with their former decision, and consequently report an explanatory act as prayed for, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 7, 1857.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany bill S. 575.]

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of Nahum Ward, report :

This claim is for the payment of forty-three loan office certificates, purporting to have been issued under a resolution of the continental Congress of 22d February, 1777. They are for the sum of \$400 each, and bear date the 23d of December, 1777, payable to "bearer" in four years, with six per cent. interest annually.

The resolutions required that the certificates should be signed by "Michael Hillegas, esq., treasurer, or Samuel Hillegas." And "for the convenience of the lenders, a loan office be established in each of the United States, and a commissioner to superintend such office be appointed by the said States, respectively, which are to be responsible for the faithful performance of their duty in said offices." And that the certificates should be "countersigned by the commissioner of one of the loan offices."—(Journals of Congress, vol. 1, pp. 505, 506, &c.)

The certificates in question were duly signed by "Samuel Hillegas," and countersigned—

"By order of J. A. Treutlen, governor of Georgia.

"E. DAVIES, JR."

The genuineness of the certificates or of the signatures is not questioned. After the passage of the pending act in 1790, (1 Stat., 138,) these certificates were presented to the treasury and rejected, as appears, upon the ground that there was "no evidence of the appointment of E. Davies" to the office of commissioner of loans for that State, or that he was ever known or reputed to have acted in that capacity.—(Am. State Papers, Claims, 464.) They were subsequently rejected in 1792 upon substantially the same ground, viz: that "they were not regularly issued from any loan office of the United States."

The majority of the Court of Claims overrule the objections to these certificates taken by the Treasury Department, and decide that the United States are justly indebted in the amount claimed, to wit: \$282 44 upon each certificate of \$400, (that being regarded as their specie value at the time of issue,) with interest.

Judge Blackford dissents from the opinion of the court, mainly on the ground that the certificates are invalid without the signature of the loan office commissioner, and there is no evidence that Mr. Davies was ever appointed or recognized as such commissioner.

The committee regard the decision of the court as substantially just, and report the bill back to the Senate without amendment.

The opinion of the court and the dissenting opinion of Judge Blackford are appended hereto.

NAHUM WARD vs. THE UNITED STATES.

Chief Justice GILLCHRIST delivered the opinion of the court.

The petitioner alleges that he is the legal holder of forty-three loan office certificates of the United States for the sum of four hundred dollars each, dated December 23, 1777, and payable on the 1st day of December, 1781, with interest, annually, at six per cent. They were signed by Samuel Hillegas. At the bottom of each is the following :

“ Countersigned by order of J. A Treutlen, governor of Georgia.
“ E. DAVIES, Jr. ”

“(Endorsed.) Four years interest to December 23, 1781. Paid in bills of exchange.

“ JNO. HILLEGAS, *Cont. Treas.*

On the 22d of February, 1777, Congress resolved that thirteen millions of dollars be borrowed on loan office certificates. The resolution of October 3, 1776, provided that the certificates should be countersigned by the commissioners of one of the loan offices hereafter mentioned, and that, for the convenience of the lender, a loan office be established in each of the United States, and a commissioner to superintend such office be appointed by the said States, respectively, which are to be responsible for the faithful discharge of their duties.

Twenty-nine of these certificates were presented at the office of the treasurer of the United States, and the interest thereon for four years was paid by the treasurer and endorsed on the certificates.

On the 28th day of March, 1782, the Secretary of the Treasury reported to Congress that no evidence had been obtained of the appointment of E. Davies to the office of commissioner of loans, or that he was ever known or reputed to have acted in that capacity ; that the certificates in question were irregularly issued and without the requisites prescribed by the acts of Congress, and that there was no evidence that the certificates were issued for any purpose of the United States.

In the year 1795 the Secretary made another report, substantially to the same effect and referring to the first report.

The position, that the claimant is bound to show, in addition to the evidence furnished by the certificates, that the United States received

a consideration for them, is entirely untenable. Each certificate acknowledges that the United States have received four hundred dollars, and until that admission is shown to be the result of fraud or mistake, it is conclusive evidence of a consideration. Such is the familiar principle of law. The words "value received" in a promissory note everywhere import a consideration.

It appears that on the 6th of March, 1780, the board of treasury reported an opinion respecting the payment of interest due on loan office certificates issued in the State of Georgia, which was as follows; "That the said interest cannot be regularly discharged except by the person who is possessed of the books of the office, and by whom alone they can be checked, and that, as the government of the said State is now again in operation, and it cannot be doubted that the business of the loan office is revived and regularly carried on, the certificates ought to be presented there."

On the 3d of August, 1780, Congress resolved, that, for payment of interest due on loan office certificates, the sum of \$456,000 be prepared agreeably to a resolution of the 28th of May, 1778, in sets of exchange on the commissioners at Paris of certain specified denominations.

It was also provided, that, on account of the present invaded situation of the States of North Carolina and Georgia, the papers belonging to the loan offices in those States should be deposited in some place of safety until the offices could be re-established in those States, and that, until such offices be so fixed and public notice given thereof, and also a notification to the board of treasury, the treasurer of the United States be empowered to pay all the interest that is or shall be due on certificates issued from either of the offices aforesaid, in the same manner that such interest is directed to be paid by the commissioner of the continental loan offices.

The ordinance for establishing a board of treasury, provided (5 Journals, 228) that the commissioners or board of treasury should have the general superintendence of the finances of the United States and of all officers entrusted with the receipt and expenditure, or application of bills of exchange or loan office certificates. It is made the duty of the treasurer to render his accounts quarterly to the auditor general, for examination by one of the chambers of accounts, and being reported to and approved by the auditor, and presented by him to the board of treasury, and no objections appearing to them, a copy should be transmitted to Congress. On the 24th of June, 1780, (6 Journals, 68,) Congress agreed to the report of a committee stating "that the board of treasury are made immediately responsible for the settlement of the public accounts, and that they are invested with a general superintending power over the chambers of accounts."

On the 28th of June, 1780, (6 Journals, 70,) Congress resolved that the interest on all loan office certificates, at the rate of six per cent. per annum, should be discharged annually, in like manner as the principal, until the principal should be paid.

Now it is very evident from these various resolutions, that the certificates from the loan office in Georgia, supposing them to be valid, were properly presented at the treasury, and that the interest was

rightfully paid by the treasurer. There is no evidence that any objection was ever made to the account of the treasurer on the ground that he had no authority to pay the interest. The strong presumption then, is, that in paying the interest, he did no more than his duty required.

But the payment of the interest has an important bearing upon the main objection in this case taken by the United States. The position is, that E. Davies was not a loan office commissioner for the State of Georgia.

Now the resolution of October 3, 1776, does not require that the commissioner of the loan office shall describe himself as such commissioner. It is requisite only that the person who is actually commissioner shall countersign the certificates. The loan offices in the States were established for the convenience of the lenders. The commissioner was not an officer of the United States, but a State officer. He was to be appointed by the said States, respectively, and they were to be responsible for the faithful discharge of his duty. The ordinance is silent as to the mode of his appointment, except that he is to be appointed by the State. In this case, we see no reason to doubt the power of the governor of Georgia to appoint a commissioner of the loan office. When the interest was paid, and when the transaction was fresh in the memories of all, no objection was taken that the certificates were not properly countersigned. It was not until the year 1792, eleven years afterwards, that this alleged defect was discovered. These considerations go very strongly to prove that Davies was the actual commissioner.

At the hearing before us, Mr. Peter Force was examined as a witness. He testified that, in the year 1846, he procured from a box of refuse papers at an auction room in this city, two sheets of loan office certificates which had been cancelled at the treasury. They were of the same emission with those now in dispute, signed by Hillegas and countersigned by E. Davies, and on each of them the interest was endorsed to the 23d December, 1781. The certificates were produced in court by the witness. Now, if subsequently to the payment of the interest, certificates of the same emission and countersigned in the same manner were received at the treasury and cancelled, the presumption, of course, is, that they were paid at the treasury. Without meaning to say—for the case does not require it—that an officer may bind the United States by acting beyond his authority, these circumstances can admit of no other explanation than that such certificates were recognized by the various officers of the United States as countersigned by the proper officer. It does not affect the strength of this position that, many years afterwards, the Secretary of the Treasury could not find evidence that Davies was the commissioner. There was evidence enough before the officers of the treasury that he was the commissioner, and it must have been upon that ground that the interest was paid. It does not appear that any objection was ever taken to this payment by the officers under whose supervision it would come, or by Congress, to whom a report of it was to be made.

For these reasons, we are of opinion, without inquiring into the other positions taken in the argument, that the United States are now

justly indebted in the amount due on these forty-three certificates, with the interest thereon; and we report a bill accordingly, estimating the certificates at \$282 44 each.

It may properly be remarked, in addition to what has been said, that these certificates purport to be for value received, and are upon interest; that they were issued by the United States, payable to bearer, and are now in the hands of *bona fide* holders. They were signed by order of the governor of Georgia, and if any additional proof were required that Davies was a loan office commissioner for Georgia, it would be found in the fact that they went from the hands of the governor to those of Davies, there being nothing to show that they came fraudulently into his possession. We cannot accede to the force of the reasoning of the various executive officers in their opinions rejecting this claim, as their arguments seem to us to be fallacious, and not to meet the true point of the case.

A BILL for the relief of Nahum Ward.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, directed, out of any money in the treasury not otherwise appropriated, to pay to Nahum Ward, of Marietta, Ohio, the sum of sixty thousand eight hundred and seventy-six dollars and ninety-nine cents, being in full for the amount due on forty-three loan office certificates of the United States, dated December 23, 1777.

IN THE COURT OF CLAIMS.

NAHUM WARD vs. THE UNITED STATES.

Judge Blackford's dissenting opinion.

I dissent from the judgment of the court in this case.

The claimant demands of the United States the amount of forty-three loan office certificates, of \$400 each, dated the 23d day of December, 1777, with the interest on the same.

These certificates are each in the following form:

"\$400.

"The United States of America acknowledge the receipt of four hundred dollars from Thomas Stone, which they promise to pay to said Thomas Stone or bearer, on the first day of December, one thousand seven hundred and eighty-one, with interest annually, at the rate of six per cent. per annum, agreeable to a resolution of the United States, passed the 22d day of February, 1777.

"Witness my hand this twenty-third day of December, anno Domini one thousand seven hundred and seventy-seven.

"SAM. HILLEGAS.

"Countersigned: By order of S. A. Trentlin, esq., governor of Georgia.

"E. DAVIES, JR."

On twenty-nine of these certificates there is the following endorsement:

"Four years' interest to December 23, 1781, paid in bills of exchange.

"M. HILLEGAS, *Cont. Treas.*"

The claimant relies alone upon these certificates as his cause of action. He stands just as the holder of a promissory note does, who sues upon the note alone, and the defendant denies the validity of the note. In that case there is but one question to try, and that is, whether or not the instrument is a valid cause of action against the defendant?

A loan office certificate, to be a valid claim against the United States, must have been issued according to law. The first resolution of Congress authorizing the issue of such certificates was passed on the 3d of October, 1776, and is as follows:

"*Resolved*, That five millions of continental dollars be immediately borrowed for the use of the United States, at the annual interest of four per cent. per annum; that the faith of the United States be pledged to the lenders for the payment of the sums to be borrowed, and the interest arising thereon, and that certificates be given to the lenders, in the form following, viz:

"The United States of America acknowledge the receipt of — dollars from —, which they promise to pay to the said — or bearer, on the — day of —, with interest annually, at the rate of four per cent. per annum, agreeable to a resolution of the United States, passed the 3d day of October, 1776. Witness the hand of the treasurer, this — day of —, A. D. —.

"Countersigned by the commissioners of one of the loan offices hereafter mentioned.

"That, for the convenience of the lenders, a loan office be established in each of the United States, and a commissioner to superintend such office be appointed by the said States, respectively, which are to be responsible for the faithful discharge of their duty in the said offices.

"That the business of the said commissioners shall be to deliver certificates for all such sums of money as shall be brought into their respective offices agreeable to these resolutions, which certificates shall be indented, and the checks kept in the said office; to keep books, in which regular entries shall be made of the sums borrowed, and the time when, and the names of the persons by whom, the said sums were lent; to transmit to the continental treasurer, once a month, an account of the cash in their respective offices, and to answer all drafts of the treasurer to the amount of the cash which they shall, at any time, have in their hands as aforesaid.

"That the Treasurer of the United States shall send to the respec-

tive loan offices such a number of certificates and of such denominations as shall be ordered by the commissioners of the treasury.

"That no certificate be issued for a less sum than three hundred dollars.

"That the several sums of money to be borrowed shall be repaid at the office where the same was lent, at the expiration of three years, and that the annual interest shall likewise be paid at the said office.

"That the said commissioners of the respective loan offices be entitled to receive of the United States one-eighth per cent. on all moneys which shall be brought into their respective loan offices, in lieu of all claims and demands that they may have for transacting the business of the said office."—(1 vol. Journals of Congress, pp. 505, 506.)

The next resolution of Congress on the subject was passed on the 15th of November, 1776, and is as follows:

"Resolved, That the certificates be of the following denominations:

737 of 1,000.....	737,000
1,470 of 600.....	882,000
2,205 of 500.....	1,102,500
2,940 of 400.....	1,176,000
3,675 of 300.....	1,102,500."

(1 vol. Journals of Congress, p. 549.)

On the 15th of January, 1777, the following resolution of Congress was passed:

"Resolved, That the continental treasurer be empowered and directed to borrow money on the loan office certificates; that they be countersigned by the auditor general for the time being, and that, in transacting this business, he govern himself by the rules prescribed to the commissioners of the other loan offices, and have for his trouble the same allowance."—(2 vol. Journals of Congress, p. 14.)

The other resolutions of Congress necessary to be noticed were passed on the 22d of February, 1777, and are as follows:

"Resolved, That thirteen millions of dollars be borrowed on loan-office certificates, of the following denominations:

2,500 of 200 dollars each.....	500,000
9,185 of 300.....	2,755,500
7,350 of 400.....	2,940,000
5,513 of 500.....	2,756,500
3,675 of 600.....	2,205,000
1,843 of 1,000.....	1,843,000

13,000,000

"Resolved, That all certificates, issuing after the first emission, be signed by Michael Hillegas, esq., treasurer, or Samuel Hillegas, and countersigned agreeable to the resolutions of Congress of the 3d of October, 1776, and 15th of January, 1777." (2 vol. Journals of Congress, p. 48.)

It appears that the forty-three certificates now sued on, were signed

by Samuel Hillegas, in pursuance of the last above named resolution of the 22d of February, 1777, and were sent with others to the loan-office in Georgia, to be countersigned by the loan-office commissioner there, and to be by him issued for such loans as might be there obtained.

It is clear, that the certificates so sent to Georgia were of no validity whilst they remained without being countersigned by the loan office commissioner there, and issued by him. The certificates were just as invalid without the signature of the loan-office commissioner as they would have been without the signature of Michael or Samuel Hillegas; because the signature of the loan office commissioner, as well as that of one of the other persons named, was expressly required by the aforesaid resolutions of Congress of October, 1776, and of February, 1777.

The claimant relies alone, as I have said, upon the certificates as his cause of action. He must, therefore, prove the certificates to be valid, and to do that, he must, as already observed, show them to be countersigned by the loan office commissioner for Georgia. But the claimant has failed to show that fact. The certificates show, upon their face, that they are not so countersigned. After the signature of Sam. Hillegas, the following words are written :

“Countersigned : By order of J. A. Treutlen, governor of Georgia.
“ E. DAVIES, jr.”

Mr. Davies shows, by that language, that, in countersigning the certificates, he acted, not as a United States loan office commissioner for Georgia, in pursuance of the resolution of Congress, but merely as an individual, in pursuance of an order of the governor of Georgia. Suppose Davies had been indicted for usurping the office of loan office commissioner for Georgia, would his signature to said writing prove that he had acted as such loan office commissioner? Certainly not. A loan office commissioner was an agent of the United States. Now did Davies, in signing said writing, act as an agent of the United States? The writing plainly shows that he did not so act, because it shows that he acted by order of the governor of a State. There is not the slightest evidence that Davies was a loan office commissioner. He did not pretend to be such commissioner. He merely signed his name, “E Davies, jr.” and says he did so by order of the governor. The resolution of Congress required the loan office commissioner to be appointed by the State of Georgia, not by the governor of the State. Where is the statute of Georgia authorising the governor to appoint a loan office commissioner? Where is the proof that the governor attempted to make such appointment? In short, where is the proof that Davies pretended to act as a loan office commissioner? In the absence of all such proof, how can it be said that Davies was a United States loan office commissioner for Georgia, and that he countersigned and issued these certificates as such commissioner. It is very certain that I cannot say so. Believing, therefore, as I do, that these certificates are not countersigned by the loan office commissioner for Georgia, I must consider them, so far as the United States are concerned, as absolutely void.

I have been speaking, thus far, of the certificates in question, as *per se*, a cause of action against the United States. I readily agree, that if the United States received value from any person for the certificates, they would be liable to such person for that value. But such liability would arise, independently of the certificates, from an implied contract. That subject, however, requires no further notice, because there is not a particle of evidence that the United States ever received the least benefit for the certificates. There is some evidence to show, that Georgia received a benefit from the certificates, and if she did, it is that State, and not the United States, that is accountable for such benefit.

It is contended that the endorsement by the treasurer, on twenty-nine of the certificates, of four years' interest having been paid, proves that the certificates were regularly countersigned and issued. I am entirely of a different opinion. If the certificates were void when put in circulation, for want of the commissioner's signature, the treasurer had no authority to make them valid by paying interest on them, or by any other act of his. Congress required the certificates to be countersigned by the proper loan office commissioner, and the treasurer could only recognize as valid the certificates which were so countersigned. If he paid the principal of any other certificates, or interest on them, his act would be wrongful, and he would be individually liable to the United States for the money so paid. Suppose the certificates were forgeries, would the treasurer's payment of interest on them make the United States liable for their payment? Certainly not, and the reason is, that he had no authority so to bind his government. The law is the same in the case before us. It may be, that if an individual should endorse a receipt of interest on a forged note purporting to be his, a subsequent assignee, without notice, might recover on the note; but the present is a different case. The treasurer was only an agent of the United States, and could only bind his principal by acts authorized by law; and no one will pretend that the law authorized him to pay interest on loan office certificates which were void. I conclude, therefore, that the treasurer's payment of interest on the certificates does not affect the question as to their validity.

In August, 1790, Congress passed an act authorizing the holders of loan-office certificates to have them funded.—(1 Stat. at Large, 138.) Accordingly, in September, 1791, these 43 certificates were presented at the treasury, by one McEvers, for Le Roy & Bayard, of Philadelphia, and were rejected. The evidence of this rejection is among the papers in the cause. At the time of such rejection, but a few years had passed from the time the certificates had been countersigned by Davies. It would seem that if Davies had been a loan office commissioner, the holders of the certificates would have then obtained evidence of that fact. No such evidence was produced, and the presumption from that circumstance is very strong, that the certificates had been countersigned, as they purported on their face to be, without any authority from the United States. In the next year, 1792, the Secretary of the Treasury, Mr. Hamilton, to whom similar certificates, countersigned by Davies, were referred, reported against their validity.

In support of my opinion, that these certificates are not binding on the United States, and ought not to be paid by them, I have the opinions of the Treasury Department of the government, officially given at various times, during a period of more than sixty years. Those opinions of the department I shall now proceed to state.

In March, 1792, the Secretary of the Treasury, Alexander Hamilton, made a report to Congress against the validity of certificates like those now in question. That report is as follows :

"The resolutions of the United States in Congress assembled, which respect the issuing of the certificates commonly called loan office certificates, make it necessary that they should be previously countersigned by certain officers denominated commissioners of loans, who were to be appointed under the authority of the particular States.

"After diligent inquiry within the State of Georgia, no evidence has been obtained either of the appointment of E. Davies (the person by whom the certificates in question were countersigned) to the office of commissioner of loans for that State, or that he was ever known or reputed to have acted in that capacity. The reverse of this, indeed, appears from various communications to the treasury, copies and extracts of which are contained in the schedule herewith transmitted. It is to be remarked, that E. Davies does not even style himself commissioner of loans ; but instead of this, adds to his signature the words, 'By order of J. A. Treutlin, governor of Georgia.'

"The certificates, however, are signed by the proper officer, and all such as have appeared are genuine ; and interest, as alleged in the petition, has been paid upon them by the late Treasurer of the United States, as in other cases. A number of those certificates have been offered to the present commissioner of loans for the State of Georgia, to be subscribed pursuant to the act making provision for the debt of the United States, and upon a reference to the treasury by that officer have been directed to be refused.

"The reasons for this direction are substantially as follows :

"The certificates in question having been irregularly issued, and without the requisites prescribed by the acts of Congress, were, of course, in the first instance, not obligatory upon the United States.

"The subsequent payment of interest upon them by an executive officer, without the sanction of any order or resolution of Congress, could not confer validity upon a claim originally destitute of it, though it might occasion hardship to individuals who, upon the credit of that payment, may have been induced to become possessors of those certificates for valuable consideration.

"There are examples of the payment of interest, by the mistakes of public officers, upon *counterfeit* and *forged* certificates. It seems to be clear that such payments cannot render valid or obligatory certificates of that description ; and yet a similar hardship to those which have been mentioned would attend those who may have afterwards become possessed of them for valuable consideration ; nor does there occur any distinction between the effect of such payment in the one and in the other case.

"Between individuals, the payment of interest by an agent, upon the *presumed* but not *real* obligation of his principal, either through

mistake or otherwise, without special authority of the principal, could certainly give no new validity to such an obligation; and the same rules of right govern cases between the public and individuals.

"These considerations were deemed conclusive against the admission of those certificates, under the powers vested in the officers of the treasury. It remains for the legislature to decide how far these are considerations strong enough to induce a special interposition in their favor. In making this decision, the following circumstances, will, it is presumed, appear to deserve attention:

"The present is not a case of mere informality; there is no evidence that the certificates were issued for any purpose of the United States. The contrary, indeed, is stated to be the fact.

"Their amount is not positively ascertained; no account of the issues having ever been rendered, though there is no appearance of any considerable sums being afloat."—(American State Papers, title Claims, p. 464.)

In a report from the Secretary of the Treasury, made in 1795, as to inadmissible claims, the certificates now in question are noticed as follows:

"Class 6.—The claims of this class are founded on certificates, commonly called *loan office certificates*, signed 'Samuel Hillegas,' and countersigned, 'by order of J. A. Treutlin, esq., governor of Georgia, E. Davies.' These certificates form part of a sum of 200,000 dollars, which was sent from the treasury on the 24th September, 1777, to Georgia, under the care of a Captain Cosmo Medici, and intended for the loan officers there, who were, at that time, and long after, William O'Bryen and Nehemiah Wade. E. Davies was never recognized or known as an officer of the United States; on the contrary, it appears, from such information as could be collected, that he was only a temporary agent for the State, employed to purchase a quantity of *Indian goods*, and that to enable him to effect this object, a sum was placed in his hands in *certificates*, which, by an *order of council*, he was authorized to *issue*. These probably were the certificates now under consideration; and it is therefore presumable that the State of Georgia has had the benefit of them.

"For remarks, more in detail on the subject of these certificates, reference is prayed to a report of the Secretary of the Treasury, dated the 28th day of March, 1792, on the petition of William Smith; a copy of said report being filed with said claims."—(American State Papers, title Claims, pp. 173, 174.)

In 1816, Mr. A. J. Dallas, Secretary of the Treasury, in answer to the chairman of a committee of the House of Representatives, wrote as follows:

"TREASURY DEPARTMENT,

"January 9, 1816.

"SIR: In answer to the inquiries contained in your letter of the 4th inst., relating to certain loan office certificates belonging to John Delafield, and referred to in his petition, a copy of which was enclosed in your letter, I have the honor to state:

"1. That the certificates (if they are of the description supposed,

as they are not sufficiently designated to render it certain) were not regularly issued from any loan office of the United States.

"2. The interest for four years was paid on a part of them by Michael Hillegas, formerly treasurer of the United States.

"3. No certificates belonging, as far as appears from any papers accompanying them, to John Delafield, are in the treasury. Forty-three certificates, corresponding in amount with those referred to in his petition, and which were presented at the treasury on the 18th of April, 1794, by Uriah Tracy, in behalf of Benjamin Tallmadge, are now in the auditor's office, and are supposed to be the certificates in question.

"4. There are four other certificates, of the nominal amount of 400 dollars each, of the same description, and presented in behalf of other persons, also remaining in the auditor's office.

"5. The objections against funding the certificates are stated in the report of the Secretary of the Treasury, of the 28th of March, 1792, on the petition of William Smith, of which a copy is enclosed.

"I will only add, that this subject has been repeatedly before Congress, and that no provision has hitherto been made for the payment, in any way, of the certificates issued under the circumstances of those in question.

"I have the honor to be, very respectfully, sir, your most obedient servant,

"A. J. DALLAS.

"Hon. Benjamin Tallmadge, chairman of a committee, &c., House of Representatives."—(American State Papers, title Claims, pp. 455-'6.)

The following report of the Register of the Treasury was transmitted to the Senate by the acting Secretary of the Treasury, in February, 1852 :

"TREASURY DEPARTMENT,

"Register's Office, February 5, 1852.

"SIR: Upon the claim of Nahum Ward, referred to the Secretary of the Treasury by a resolution of the Senate, February 24, 1846, and by the Secretary to the Register of the Treasury, March 2, 1846, I have the honor to submit the following report:

"The papers in this case were first submitted to the Register on the 3d day of February, 1852, which will account for the difference in the date of the reference and the report.

"This claim has now been before the Treasury Department and Congress for more than sixty years, and in that time has undergone very thorough investigation, having been the subject of reports by Alexander Hamilton and Oliver Wolcott, Secretaries of the Treasury: one made in 1792 and the other in 1795; and also of sundry reports, favorable and adverse, by both Houses of Congress. At this late day it is therefore scarcely to be expected that any new light can be thrown upon the subject by any records or documents existing in this office, everything relating to it having been heretofore furnished.

"It is admitted that the claimant is in possession of forty-three loan office certificates of four hundred dollars each, dated 23d Decem-

ber, 1777, payable to Thomas Stone or bearer, and signed by Samuel Hillegas, and countersigned 'by order of J. A. Treutlin, governor of Georgia, E. Davies.' They were payable on the 1st day of December, 1781, with interest at six per cent.

"It is not denied that the signature of Samuel Hillegas is genuine, and that he had authority to sign the certificates on behalf of the United States; but it is denied that E. Davies had any authority to countersign the certificates, he not having been appointed commissioner of loans for Georgia, and the resolution of Congress of October 3, 1776, under which they were issued, requiring them to be countersigned by the commissioner or commissioners of loans for the State to which they were sent to be issued; that if he thus countersigned them as he states 'by order of J. A. Treutlin, governor of Georgia,' and they were issued for the benefit of the State of Georgia, then they constitute a claim against the State of Georgia, and not against the United States.

"It is admitted that the certificates in question are a part of a lot which were sent to Georgia early in the year 1777, and which were all previously signed by the proper officer of the treasury.

"The first intimation we have of these certificates is, that they were, on the 24th September, 1791, offered at the treasury for the purpose of being funded, by Mr. James McEvers for Leroy & Bayard, merchants, of Philadelphia, and then rejected on the ground of not having been regularly issued—not having been countersigned, in accordance with the resolution of Congress, by the loan officer or loan officers of Georgia.

"At the session of Congress which followed, the subject was brought before that body by the petition of William Smith, of Baltimore, the possessor of loan office certificates of the same character, who prayed Congress to order their payment; the subject was referred to a committee, and the Secretary of the Treasury, being called on, made a report, which is hereto annexed, and to which reference is desired. The committee, adopting his report as their own, came to the conclusion that the prayer of the petitioner ought not to be granted.

"In classifying the various claims against the United States, Oliver Wolcott, Secretary of the Treasury, made a report upon these claims, which were placed in class number six. His report is also annexed.

"It does not appear how these certificates came into the possession of Leroy & Bayard, nor where they had been from the time they were issued by E. Davies until presented at the treasury in September, 1791.

"It surely must have been in the power of Leroy & Bayard to have shown who they received them from, and to have traced them back to the first person or persons to whom they were issued. This was not attempted, and we are left in the dark as to the reason of their negligence.

"It is alleged that the certificates were placed in the hands of E. Davies by Governor Treutlin, with directions to him to countersign them, for the purpose of paying Captain Robert Farquhar for certain goods which the said Davies and Thomas Stone, to whom they were

made payable, had, by order of the governor and council of Georgia, purchased of him.

"It is now well substantiated that these men (Davies and Stone) were ordered to purchase the goods of Farquhar, and did make the purchase, the whole amounting to £63,605, or £7,586 10s. 1d. sterling money; but it also appears from a pamphlet found among the papers, entitled 'Report of the commissioners on the petition of Peter Trezevant, Milledgeville, 1842,' that these goods were never paid for by Davies and Stone, or either of them, and that if Davies received these certificates from Governor Treutlin for that purpose, he committed a breach of trust, and used them for some other purpose. It appears from this pamphlet, which is the republication of the proceedings of the legislature of Georgia upon a claim made against the State by the legal representatives of the said Robert Farquhar for the amount of the goods sold to Davies and Stone, that the legislature admitted the justness of the claim, and at one time ordered its payment; that auditor's certificates were authorized to be issued and were issued to Peter Trezevant, who married the heir-at-law of the said Farquhar, for the above amount of £7,586 10s. 1d.; but it also appears that these certificates had not been paid by Georgia as late as 1840.

"From the most deliberate examination of the subject I have been able to give it, the conclusion is forced upon my mind, that instead of using the certificates entrusted to them by Governor Treutlin, if they were so entrusted, for the purpose of paying for the goods they had purchased of Farquhar, by the order of the governor and council, Davies and Stone must have used them for their own purposes, and most likely sent them to Leroy & Bayard, of Philadelphia, with whom it is not improbable they had dealings.

"In one of the letters from Savannah which accompanies the report of Secretary Hamilton on this subject, that of Mr. Steick, it is stated that Davies kept both the goods purchased of Farquhar and the certificates.

"From the time when, in 1792, the committee of Congress and the Secretary of the Treasury made adverse reports, no movement seems to have been made by the holders of these certificates down to the year 1816, a period of twenty-four years. During all this time the decisions and reports made upon them were acquiesced in. In the meantime the forty-three certificates first heard of in the possession of Leroy & Bayard, had passed into the hands of Richard Platt, of New York, who was the treasurer of the Ohio company, and upon whose failure, it appears, these certificates, with other property, passed to the said company in part payment of what was due from their treasurer.

"It further appears that they came into the possession of Colonel Benjamin Tallmadge, as treasurer of said company, who, on the 5th of March, 1815, transferred them to John Delafield. This transfer, it seems, was not intended to change the ownership of the certificates, Mr. Delafield being a stockholder in said company, whose property they still remained. The transfer may be accounted for from the fact that Mr. Tallmadge was a member of the Congress which commenced

its session on the first Monday of the following December; that to this Congress John Delafield petitioned for relief in the premises, and that Mr. Tallmadge had become chairman of the committee to whom his petition was referred.

"As chairman of that committee, he at the first session made a favorable report, which, not having been acted on by the House, the same petition was presented at the next session, referred to the same committee, and another favorable report made by the same chairman, which met a like fate with the former.

"The inquiry is here forced upon us, why it was that after these certificates were rejected at the treasury in December, 1791, on the ground that Davies had no authority to countersign them, the owners, Leroy and Bayard, or those into whose hands they subsequently passed, did not take some steps to show that he (Davies) had at least countersigned them by order of Governor Treutlin, and that they had been used for the benefit of the United States. Nothing of the kind appears to have been attempted until 1816, twenty-five years after, when Governor Treutlin and others, who must have been able to speak with some degree of confidence upon the subject, had gone down to the tomb or forgotten the circumstances.

"The Secretary of the Treasury was not, however, thus negligent, but was diligent in obtaining all the information upon the subject which could be collected, the result of which he has stated in his report, hereto annexed.

"It is presumable that after the rejection of these certificates at the treasury in 1791, and the reports made against them by the Secretary of the Treasury and the committee of Congress, the certificates could not have been estimated very highly; this idea is strengthened by a resolution adopted at a meeting of the Ohio company at Philadelphia, 10th May, 1792, which is in the following words: 'It is further resolved, that it be entirely in the discretion of the treasurer to sell or retain the loan office certificates countersigned E. Davies as he shall think most conducive to the interests of the company—provided always, that the sale of the said certificates shall be made on such conditions as not to subject the company to refund the proceeds of such sale, if the certificates shall not prove obligatory on the United States.

'BENJAMIN TALLMADGE, *Clerk.*'

"But all this aside, the question arises, are the United States legally or morally bound to pay these certificates? I can find nothing in this office, nor among the papers presented by the claimant, to give it a complexion different from what it wore when it was reported upon by the Secretary of the Treasury in 1792; by Mr. Little in the House, March 3, 1826; by Mr. Shepley in the Senate, January 6, 1836; and by Mr. Jarnagin in the Senate, January 29, 1844.

"I have the honor to be, sir, your obedient servant,

"N. SARGENT, *Register.*

"Hon. THOS. CORWIN, *Secretary of the Treasury.*"

I here close my opinion respecting this claim. The judgment of the majority of the court is in favor of the claimant for the sum of sixty thousand eight hundred and seventy-six dollars and ninety-nine cents. A careful examination of the facts and law of the case has satisfied me that the claimant has no right to recover.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1857.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany bill S. 577.]

The Committee on Naval Affairs, to whom was referred a bill entitled "A bill authorizing the Secretary of the Treasury to ascertain and pay the balance due on a tract of land heretofore ceded for the purposes of a marine hospital for the district of Boston and Charlestown to the credit of the naval hospital fund, have had the same under consideration, and thereupon report:

The facts involved in the purchase and transfer of the land mentioned in the bill are set forth in the report of the Secretary of the Navy, submitted to Congress at its present session, as follows:

"I invite your attention also to the recommendations of my last report, that some measure should be adopted to secure for the hospital fund the value of the ten acres of land alienated from the hospital estate at Chelsea, Massachusetts, and applied to the purposes of a marine hospital for the district of Boston and Charlestown, by act of Congress approved March 3, 1855.

"This property was purchased by authority of the Secretary of the Navy in the year 1823, and paid for out of the hospital fund. This fund was established by act of Congress of March 2, 1799, which directed the Secretary of the Navy to deduct twenty cents per month from the pay of every officer, seaman, and marine, and to pay the same quarter annually to the Secretary of the Treasury; and again, on the 26th of February, 1811, Congress enacts that the money collected in virtue of the former law shall be paid to the Secretary of the Navy, Secretary of the Treasury, and Secretary of War, who are appointed a board of commissioners, by the name and style of commissioners of navy hospitals, and shall constitute a fund for navy hospitals; the commissioners are also required to procure, at suitable places, 'proper sites for navy hospitals.'

"By an act approved July 10, 1832, Congress directed the commissioners of the hospital fund to close their accounts as trustees of that fund, and to transfer all balances of cash, or other property belonging to the fund, to the Treasurer of the United States, for the use of the Secretary of the Navy, for expenditures on account of navy hospitals,

2 MARINE HOSPITAL FOR BOSTON AND CHARLESTOWN.

&c. It then constituted the Secretary of the Navy trustee of the hospital fund, making it his duty to 'direct and control the expenditures out of the navy hospital fund.'

"It was therefore out of a fund created by a tax upon the pay of the navy that the Chelsea estate was purchased, and not with any appropriation by Congress *from the treasury*, as the phraseology of the 6th section of an act making appropriations for the civil and diplomatic expenses of the government, approved March 3, 1855, would imply, when it refers to the land heretofore 'purchased by the United States,' for the purposes of a naval hospital. The United States bought the land through agents appointed under the act of February, 1811, to take charge of a fund which had been already created for certain definite purposes; and the deeds of conveyance are made out in the names of the persons specified in the act, by direction of the then Secretary of the Navy, as commissioner of the naval hospital fund.

"It will thus be seen that the United States had no other connexion with the purchase of the Chelsea estate than to authorize a trusteeship, with certain expressed powers, of a fund raised by a deduction or tax upon the pay of the navy, to be applied to specific purposes, as 'the purchase of sites for naval hospitals, or other means of relief for sick or disabled seamen of the navy.'

"I repeat the suggestion, that application be made to Congress to reimburse the hospital fund for this diversion of its means, or for authorizing the Secretary of the Treasury to transfer the ascertained value of the land to the hospital fund, out of any non-appropriated money in the treasury. The value of the land can be ascertained in such way as the department may deem most advisable."

The law to which the Secretary refers is in the following words:

"Sec. 6. That a tract of ten acres of land heretofore purchased by the United States for the purposes of naval hospital at Chelsea, Massachusetts, be selected and set apart, under the direction of the President of the United States, for the use of the marine hospital of the district of Boston and Charlestown."

Upon this statement of facts, the committee report the bill back to the Senate, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1857.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

[To accompany bill S. 578.]

The Committee on Naval Affairs, to whom were referred the memorials of the Boston Board of Underwriters and the Chamber of Commerce of New York, relative to protecting our trade with China, have had the same under consideration, and report :

The petition of the Boston Board of Underwriters calls the attention of Congress to the frequent and serious interruptions of and depredations upon American commerce by the systematized piracy in the China seas. The Chinese pirates have always preyed upon our commerce in defiance of the efforts of the Chinese authorities, in the exercise of all their power ; but since the commencement of the existing internecine war, they have become more numerous, bold, and formidable than ever, and their frequent and daring attacks upon American vessels, in the absence of all power in the Chinese government to suppress or punish them, demand the energetic action of our naval forces.

The numerous shallow bays and secret hiding places which the coast and islands of China afford for their escape and concealment, the shallowness of whose waters preclude the entrance of any of our ships-of-war, enable them to choose their opportunities, and to commit depredations with but little danger of pursuit or capture ; and the memorialists suggest the construction of two armed steamers of a draught of water so light as to enable them, not only to enter all the five free ports of China, but to pursue the piratical junks into their bays and rendezvous.

Your committee is convinced that we have no suitable naval vessel for this purpose, and that the safety of lives and property of our citizens in the China trade demand the presence of such a vessel at all times, as a part of our naval forces in the China seas.

The honorable Secretary of the Navy, in response to the inquiry of your committee, says, in his letter of the 5th February, 1857 :

NAVY DEPARTMENT, *February 5, 1857.*

SIR: I have the honor to acknowledge the receipt of your letter of the 2d instant, desiring, for the information of the Committee on

Naval Affairs, a report of "the probable cost when ready for sea, of a light draught steamer, suited to operating against the pirates in the China seas."

Your letter was referred to the Chief of the Bureau of Construction, &c., for the necessary information, and I respectfully furnish herewith a copy of his report.

I am, sir, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. S. R. MALLORY.

Chairman Committee on Naval Affairs, U. S. Senate.

NAVY DEPARTMENT,

Bureau of Construction, &c., February 5, 1857.

SIR: In compliance with your instructions accompanying the letter of the Hon. S. R. Mallory, desiring the cost, when ready for sea, of a light-draught steamer suitable for operating against the pirates in the China seas, it is respectfully submitted that the lightest draught of water for an efficient armed vessel for this purpose would be about nine feet, mounting a long 24-pounder on a pivot, with two 24-pounder howitzers and two 12-pounder "boat howitzers" for landing. The estimated cost of such a vessel, completed, is \$120,000.

It is respectfully suggested, that if a draught of water of 12½ to 13 feet can be permitted, such a vessel could be armed with a long 32-pounder on a pivot, with four light 32-pounders on carriages, and "boat howitzers" for landing. The estimated cost of this vessel, completed, is \$195,000.

I have the honor to be, respectfully, your obedient servant,

JOHN LENTHALL,

Chief of the Bureau.

Hon. J. C. DOBBIN,

Secretary of the Navy.

Your committee report a bill in accordance with the lowest estimate of the department.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1857.—Ordered to be printed.

Mr. SLIDELL made the following

REPORT.

[To accompany bill S. 579.]

The Committee on Roads and Canals, to whom have been referred the resolutions of the legislature of the State of Ohio, of the city council of Cincinnati, and numerous memorials of owners and officers of boats navigating the Ohio and Mississippi rivers, upon the subject of enlarging and improving the " Louisville and Portland canal " around the falls of the Ohio, submit for the consideration of the Senate the following report :

That an act of the State of Kentucky, " to amend the charter of the Louisville and Portland Canal Company," approved January 21, 1842, provided that the annual net revenue of said company should be appropriated to the purchase of shares of stock owned by individuals ; and when so purchased, to be transferred to the United States upon the terms and conditions contained in the 4th section of said amended act, which reads as follows :

" That the shares so purchased by said board shall be held in trust by it for the purposes herein declared, and shall be voted on by them at all subsequent meetings and elections until, by the operation of the provisions of this act, all the shares standing in the name of others than the government of the United States shall have been purchased up ; and when the said shares shall all be purchased, the same shall be transferred to the government of the United States, on condition of said government levying tolls, for the use of said canal, only sufficient to keep the same in repair, and pay all necessary superintendence, custody, and expenses, and make all necessary improvements, so as fully to answer the purposes of its establishment ; and further to protect and guard the interests of commerce, the superintendents or agents in charge of said canal shall ever hereafter, on the first Monday in January, annually report to the general assembly of Kentucky the amount of tolls levied and received, and of the charges and expenses incurred on the same, the general assembly reserving the right of directing the amount annually to be collected, if found too much for the purposes contemplated by this amended act."

The present interest of the government of the United States in this

canal, as well as the manner of its management, will be seen from the following communication of the Secretary of the Treasury:

TREASURY DEPARTMENT,
January 17, 1857.

SIR: The stock of the Louisville and Portland canal consisted of 10,000 shares of \$100 dollars each, and all the private shares have been paid out of the receipt of tolls, and transferred to the United States, except the five held by the president and four managers of the canal. These shares are worth about \$250 each, and were withheld by the president and managers at the request of the Treasury Department, in order to keep up a legal organization of the company for the purpose of its management. The president and managers are willing to transfer these five shares to the United States on request, and take the present price out of the receipt of the tolls as the other private stockholders.

After the president and managers reported there were funds sufficient to pay off the private stockholders under the provisions of the amended charter, the request to retain the five shares was made, and directions given to reduce the tolls one half, in compliance with the spirit of the amended charter. The tolls were reduced accordingly, and receipts applied to the repair and improvement of the canal, as contemplated by the amended charter, and with which Congress had acquiesced.

The department has written to the president and managers for the information necessary to comply with the resolution of the Senate, and, as soon as received, the department will respond to the resolution.

Agreeably to your request I have examined Senate bill No. 243.

The object of the amended charter granted by the State of Kentucky was to provide that this canal should become the property of the United States, and be managed and controlled by the United States, for the purpose of paying the expenses of management, the expenses of repair, and the expenses of necessary improvements, and that no more tolls should be charged than would be required for these objects. The bill, No. 243, is intended to transfer the management to the State of Kentucky, with like restrictions, but somewhat more stringent, with power of visitation and resumption of the trust at the will of Congress.

In my judgment, if the transfer of the management is made to the State of Kentucky, it should be on the terms of the amended charter, without power of visitation or recall. I think the State ought not to be subject to have her management reviewed, nor her acts condemned by withdrawing the management. This is but an individual opinion. The question of acceptance must be for the constituted authorities of Kentucky, after Congress shall have passed the act transferring the management.

I have not considered the other sections of the bill.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. JOHN SLIDELL,
Chairman of Committee on Roads and Canals, Senate U. S.

The subject of removing or of overcoming the obstructions to navigation at the falls of the Ohio has engaged the attention of Congress for a number of years. This committee, during the sessions of the last and present year, have had in earnest consideration the manner of improving and extending the facilities for avoiding obstructions, so as to accommodate fully the requirements of the vast commerce of the States bordering upon the Ohio and Mississippi rivers. It is well known that a large proportion of steamboats navigating the Ohio cannot, on account of their size, pass the falls, except during high stages of water. Fourteen States of this Union are more or less afflicted in their commerce by the condition of this canal; and here it would be proper to give the amount and value of products which are transported to a market by the Ohio and Mississippi rivers, but that it has been done already in an able report from this committee, in August, 1852, upon a bill "To provide more effectually for overcoming the obstructions to the navigation of the Ohio," and subsequently forming a portion of the report made by this committee, in February, 1855, upon the same subject. It is useless to adduce additional data to prove the necessity for an increase of the existing means of passing the great falls for boats of all classes. That a very great amount of commerce is impeded is unquestioned; the natural obstructions to navigation, and the inefficiency and contracted dimensions of the Louisville and Portland canal, are conceded. The only question unsettled is the remedy to be applied.

This committee, in view of the present and pressing exigencies of commerce, recommend, as the most practicable as well as the most economical mode of overcoming the impediments to navigation at the great falls of the Ohio, the enlargement of the present canal.

The estimated cost of the proposed enlargement and improvement of said canal is \$1,315,568, according to the report of Edward Watts, civil engineer in the employ of the canal company, and transmitted to the House of Representatives by the Secretary of the Treasury, and printed for the use of Congress. Particular reference is made to Mr. Watts' communication for details of the plan of the proposed improvement. One objection has been urged, which, if well-founded, would have proved insuperable to any plan of enlargement, however well devised. This has been removed by instituting an inquiry to determine if the use of the canal would be materially interfered with during the progress of the work of widening. The following communication from the Secretary of the Treasury, accompanying an additional report from Mr. Watts, is deemed satisfactory on this point.

TREASURY DEPARTMENT,
January 26, 1857.

SIR: Enclosed please find the letter of James Marshall, president of the Louisville and Portland canal, under date of the 30th of September, 1856, which I mentioned to you, and which gives reasons in favor of the branch according to Mr. Watts' report, and which I think perfectly conclusive. Enclosed you will also find an additional report from Mr. Watts, in which he states the manner in which he proposes to make the enlargement

of the present canal, and knowing as I do the site of the canal, and the condition of the river as to navigation, I feel assured the present canal can be enlarged without interfering with the use of the present canal, whilst the enlargement is being made.

I have requested Mr. Watts to deliver you this letter with the enclosures, and, if you desire, to appear before your committee and give any explanations you and the committee may desire.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

HON. JOHN SLIDELL,
Chairman Committee on Roads and Canals, Senate United States.

WASHINGTON CITY, D. C.,
January 27, 1857.

SIR: I have the honor to submit herewith a sketch of the Louisville and Portland canal, exhibiting the proposed addition to its width, with the following remarks in relation to the process which I propose to adopt for increasing the width to one hundred feet, without interrupting the use of the canal during the progress of the work of enlargement.

The excavation for the canal now in use, except for a short distance at its head, where it was comparatively light, was thirty feet deep; of which, on an average, at the bottom of the cut, about seven feet was rock.

For two thirds of its length on the north and three fifths of its length on the south side of the canal there are vertical side walls; these walls are sixty-four feet apart. They are not built up from the bottom of the canal, but are founded on the surface of the rock met with in excavating the canal. These side walls rise three feet above the highest stage of water in which the canal is used.

I propose to make the additional width of thirty-six feet, of the same depth of the present canal, which will require an excavation over that much surface throughout the entire length of the canal.

That excavation I have ascertained will be through earth readily removed for twenty-three feet deep, leaving the remaining seven feet to be excavated through rock.

The additional width will be on the south side of the canal, and will be laid off from the interior face of the present south wall. This will make the south wall of the enlarged canal, when finished, parallel to, and thirty-six feet from, the present wall. I propose to commence the work of excavation on the line which will be occupied by the south wall of the enlarged canal, and to proceed with it throughout the entire length of the canal, in convenient sections, both as to the length and width, to within such distance from the present south wall as will leave an embankment of sufficient strength to resist any pressure from the water of the present canal. This will leave but a narrow strip to remove in order to complete the enlargement, and

may be done by taking advantage of a period of low water in the river, without interrupting, in the slightest degree, the navigation of the present canal around the falls.

Very respectfully, your obedient servant,

EDWARD WATTS,
Civil Engineer.

HON. JAMES GUTHRIE,
Secretary of the Treasury.

Were other testimony wanting, in addition to the foregoing, in regard to the feasibility of the work without interrupting the passage of boats through the canal, it will be found in the report made by Major William Turnbull, on behalf of the board of officers appointed to make a survey of the plans for canals around the falls of the Ohio, transmitted to the Senate by the Secretary of War on the 16th February, 1853. Also the opinion of those most deeply and directly interested, as expressed in one of a series of resolutions, adopted at a meeting of the owners, masters, and pilots of steamboats, held at Cincinnati in June of last year, which is subjoined.

"Resolved, That, in our opinion, the improvement of the present canal, so far as to render it of sufficient capacity for the business of the country, can be done without any interference with the use of the canal while such improvement is being made."

Subsequently the chamber of commerce of that city endorsed the resolutions adopted at the above meeting, in the language as follows:

"Resolved, That in the opinion of this chamber the plan for enlarging the present canal around the falls of the Ohio, discussed and sustained at a meeting of the owners, masters, and pilots of steamboats on the 28th June last, is the most practical and economical scheme yet suggested for the increase of canal facilities at that place, and deserves the cordial support and active sympathy of the merchants, manufacturers, and owners of real estate in Cincinnati."

After a careful review of the ground this committee are of opinion that the canal should be widened and improved; and a bill providing therefor, and appropriating for the work the revenue arising from tolls, after payment of expenses of management, is accordingly reported.

A bill to enlarge and improve the Louisville and Portland canal.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Louisville and Portland canal shall be improved in the manner following, to wit: Said canal, as it now exists, to be widened so that it shall be one hundred feet wide in the water way, and its channel depth made uniform and sufficient for the passage of any boats that can navigate the river in low water above and below the falls; and two basins to be formed in said canal for the purpose of permitting boats to pass not less than one hundred and seventy-five feet wide and four hundred and fifty feet long. There shall also be made a branch to said canal of width and depth corresponding with the residue when improved, as above pro-

vided, which shall leave the present canal at Dry Dock, and enter the river below the rocks, near the foot of Sandy island, which branch canal shall be furnished with one or two lift locks, at the foot eighty feet wide and four hundred feet long in the chamber. There shall also be placed at the head of the canal a proper guard lock and gates, and along its line two draw or other pivot bridges; *Provided, however*, That the improvements proposed shall be made in such manner as to cause the least possible interruption to the navigation of the canal whilst they are in progress.

SECTION 2. *And be it further enacted*, That during the progress of the improvement of said canal, as herein provided, the rate of tolls shall continue as at present fixed by the Secretary of the Treasury, and the money arising from such tolls, after paying necessary expenses of management, shall be appropriated and used in improving and extending the canal according to the plan herein set forth; but after said improvements shall be completed, the rates of toll shall be reduced to ten cents per ton, custom-house measurement, for steam vessels, and proportionate rates for other craft, unless a greater amount be necessary to pay for managing and keeping the canal in repair, and to improve the same, as provided in the amended charter of said canal, and under which the United States became the owner of all the stock in the same.

SEC. 3. *And be it further enacted*, That the Louisville and Portland canal, now the property of the United States, shall continue and remain a public canal for the accommodation of all vessels and crafts desiring to use the same, under the control and direction of the Secretary of the Treasury.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1857.—Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany bill H. R. 656.]

The Committee on Private Land Claims, to whom was referred House bill No. 656, "An act for the relief of Joseph Irish, William Sturgis, and Bartholomew Baldwin," have had the same under consideration and submit the following report:

The committee find a report covering the facts in this case from the House Committee on Private Land Claims, submitted by Mr. Thorington, on the 10th day of January, 1857, which they hereto attach and make a part of this report. The committee are of opinion that relief should be granted to the parties, respectively, they, therefore, report back the bill with a recommendation that the same do pass.

REPORT.

The Committee on Private Land Claims, to whom were submitted the petitions of Joseph Irish, William Sturgis, and Bartholomew Baldwin, made the following report:

It appears that a part of what is now the Territory of Minnesota was surveyed before the organization of its territorial government, and while it was a portion of Wisconsin. The act organizing the Territory reserved for public school purposes the sixteenth section only in each township, while that of Minnesota reserves the sixteenth and thirty-sixth sections for the same purpose. It appears that the petitioners had each settled on thirty-sixth sections prior to the passage of said act, and in ignorance of its provisions, and they therefore pray for relief.

Relief has been granted in cases similar by the recommendation of the Commissioner of the General Land Office. In the other Territories of the United States relief is granted in such cases by a general law. It appears that the petitioners have resided on the sections they claim many years, that they have improved the same, and that they made their settlements in good faith; and your committee therefore recommend the passage of the bill herewith reported for their relief.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1857.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill H. R. No. 538.]

The Committee on Private Land Claims, to whom was referred bill H. R. No. 538, "An act for the relief of the inhabitants of the parish of Ascension, State of Louisiana, have had the same under consideration, and submit the following report :

The committee find a report from the House Committee on Private Land Claims, submitted by Mr. Sandidge on the 19th of December, 1856, which embraces all the facts in this case, and which is hereto attached and made a part of this report.

For the reasons therein set forth, the committee are of opinion that the relief provided in the bill ought to be granted. They, therefore, report back the bill without amendment, and recommend that the same do pass.

Report from the House Committee on Private Land Claims.

Under the law of Congress passed in 1805, creating a board of commissioners to examine and report upon the private land claims in the Territory of Orleans, the commissioners (in their report presented to Congress in 1812, and published in the 2d volume of American State Papers, page 297, number 391) state: "That Isidore Blanchard claims for the parish of Ascension a tract of land situated on the west side of the river Mississippi, containing four arpents one toise and four feet front, and forty arpents in depth, and bounded on the upper side by lands of William Conway, and on the lower by land of Jean Vessier. There is no written evidence of title to the land claimed ; the church is built upon it, and it has been used as a glebe for a great number of years, and is claimed by the people of the parish as belonging to them for the use of the church. The board are of opinion it ought to be confirmed."

This board was authorized to make final adjudication of title as against the United States ; failing to do that in any given case, they

were required to make report for presentation to Congress, with an opinion thereon as to the justness of the claim.

On the 3d March, 1811, Congress passed an act for the sale of public lands, with a *proviso* in the 6th section, "that till after the final decision of Congress thereon, no tract of land shall be offered for sale, the claim to which has been in due time, and according to law, presented to the register of the land office, and filed in his office for the purpose of being investigated by the commissioners appointed for the purpose of ascertaining the rights of persons claiming lands in the Territory of Orleans." Under this proviso, the lot claimed by Isidore Blanchard as stated, and reported to Congress for confirmation, cannot be sold by the officers of the government until Congress shall have acted thereon. And although the act of 12th April, 1814, confirming claims reported on favorably, has been construed as a confirmation of the one now in question, yet, as no certificate of its confirmation was issued by the register of the land office *prior* to the passage of the act of 26th May, 1844, and as he may not *now* have the right so to do, inasmuch as that act of 1844 declares that the lands embraced within its provisions, if not claimed by petition before the court created by it, within two years from the passage of the law, should be forfeited. And as the land can neither be surveyed and patented to claimants without such certificate from the register, nor sold by the government until action is had on the original application; and as it was the undoubted intention of Congress that all the claims thus reported upon favorably by said board should be confirmed; and as the lands in question have been used and recognized as glebe lands for more than sixty years, your committee are of opinion the same should be confirmed in accordance with the original report of the land commissioners and the plan of surveys in the approved maps on file in the office of the surveyor general of Louisiana.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1857.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany bill S. 581.]

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of Collier A. Minge, Philip T. Ellicott, and Lucretia A. Brodie, report:

This claim arises under a stipulation in a contract for the excavation of the channel of the Dog river bar, harbor of Mobile.

The third article of the agreement stipulated that the contractors should be paid "the sum of eighty cents per cubic yard of earth excavated from the aforesaid channel, the number of yards to be ascertained by exact measurement made by Captain J. G. Barnard, or other agent of the United States."

Upon the back of the "agreement" was the following endorsement, to wit:

"*Memorandum.*—It is understood that the measurement shall be by the scow loads, if uniformly filled, and the work done to the satisfaction of said Captain J. G. Barnard, or other agent of the United States, he reserving the privilege of testing the above measurement by soundings, and such other examinations as he may think proper to make."

It appears that the earth excavated by the contractors, according to the measurement made by the engineers in charge of the work, was 58,759 yards, which was paid for at the stipulated rate, amounting to \$47,007 20.

The court find from the testimony that there were 3,392 scow loads, of 25 cubic yards each, which would make 84,800 cubic yards; which, at the contract price, would amount to \$67,840—making a difference of \$20,832 80, the balance claimed.

The court decides that the meaning of the contract is, that the excavations should be measured by *scow loads*; and although the agent of the government might *test* the measurement in any way he should think proper, he could not affect the provision that the measurement was to be by *scow loads*.

Judge Blackford dissents, and takes the ground that the reservation

of the privilege of the engineer "of testing the above measurement by soundings, and such other examinations as he may think proper to make," conceded the right of the government to adopt the measurement by soundings, and that the contractors were bound by it; and that the memorandum endorsed upon the back of the contract could not have the effect to control the stipulation of the third article, which required that the number of cubic yards of earth excavated should be ascertained by exact measurement, made by an agent of the United States.

The committee, acquiescing in the legal construction of the contract as given by the court, report the bill back to the Senate, and recommend its passage.

C. H. MINGE AND OTHERS vs. THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the court.

On the 5th day of December, 1838, two of the claimants, Minge and Ellicott, made an agreement, in writing, with Captain Barnard, of the engineer corps, the first clause of which provided for the building of certain steam dredging machines, to be used in the excavation of the Dog River bar, in the harbor of Mobile. By the second clause, the claimants agreed that they would cause such excavations to be made as might be required to be done by Captain Barnard, or other agent of the United States, provided such excavations should not be carried deeper than twelve feet at low water. The third clause provided that the claimants should be paid the sum of eighty cents per cubic yard of earth excavated, the number of cubic yards to be ascertained by exact measurement, made by Captain Barnard, or other agent of the United States.

Upon the back of the contract was the following memorandum:

"It is understood that the measurement shall be by the *scow load*, if uniformly filled, and the work done to the satisfaction of the said Captain J. G. Barnard, or other agent of the United States, he reserving the privilege of testing the above measurement by soundings, and such other examination as he may think proper to make."

Two steam dredges were employed in this work—the "Pilot" and the "Carroll." Minge and Ellicott were jointly interested in the Pilot, and Minge, Ellicott, and one Charles Brodie, each owned one-third part of the Carroll. Brodie is dead, and his administratrix, Lucretia A. Brodie, appears to prosecute this claim.

The allegation is, that 2,300 scow loads were excavated by the Pilot, and 627 scow loads by the Carroll, making 2,927 scow loads in all. Each scow load contained 25 cubic yards, making 73,175 cubic yards in the whole; which, at the contract price, 80 cents per yard, amount to the sum of..... \$58,540 00
Of this the claimants have received..... 47,007 20

Leaving the amount claimed, according to the direct evidence..... 11,532 80

The first question in the case arises upon the construction of the

contract, the third clause of which provides that the number of cubic yards should be "ascertained by exact measurement," by Captain Barnard, or other agent of the United States. The memorandum on the contract, which is as substantial a part of the contract as any other part of it, provides that the measurement shall be by scow loads, if uniformly filled, and the work done to the satisfaction of Captain Barnard, he reserving the privilege of testing the above measurement by soundings, and such other examinations as he might think proper to make.

Of the meaning of this contract there can be no doubt. The excavations are to be measured by *scow loads*, and the agent of the United States had the right to test the measurement in any way he should think proper. He might test it, or he might not, as in his judgment, as a faithful agent, should be necessary; but whatever test he might apply, could not affect the provision that the measurement was to be by scow loads. But we cannot better express our views than by adopting the lucid and pertinent language used by Mr. Justice Blackford, in stating the opinion upon the meaning and construction of the contract, which was as follows:

"The only question in this case which we have now to decide is, whether the contract, with the memorandum endorsed on it, entitles the claimants to be paid for their work agreeably to a measurement by scow loads?

"The measurement, according to the memorandum, was to be by scow loads, if uniformly filled; and whether the measurement, when so made, was correct or not, might be tested by the government agent by soundings and other examinations.

"The right of the agent, reserved in the memorandum, was not to *measure* the work by soundings and other examinations, but to *test*, by any examination he chose to make, the accuracy of the measurement made by scow loads.

"The question, therefore, presented in this case, must be answered in the affirmative."

The only remaining question is one of fact, and that is, How many scow loads were actually excavated?

The evidence of John Brown proves that between the 2d of November, 1839, and the 1st of July, 1840, there were removed by the Pilot 1,065 scow loads at the Dog River bar. During this period there was no government inspector of the work, except for a few days at the commencement.

H. D. Johnson proves that the inspector had returned, while he was present, 1,200 loads by the Pilot.

The claimants allege that they have proved the excavation of 627 loads by the Carroll by direct evidence, and of a further quantity, which is left to be ascertained by the testimony.

It appears by Charles Mellen's testimony, that between September, 1839, and the 5th of February, 1840, there were removed by the Carroll 627 loads. He also says, that from the 5th of February to the 1st of June the season was favorable, and the Carroll did a fair amount of work. The average of the work done during the first

period is about 125 loads per month, which would give, for the last period of four months, 500 loads.

The whole amount would be as follows:

By the Pilot.....	2,265 loads.
By the Carroll.....	1,127 "
	<hr/>
	3,392 "
	<hr/>

These 3,392 loads, at 25 cubic yards for each load, make 84,800 cubic yards; which, at 80 cents per yard, amount to.....	\$67,840 00
Deduct the amount paid.....	47,007 20
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The balance is.....	20,832 80
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It is argued by the deputy solicitor, that from the number of loads proved by the claimants should be deducted the quantity excavated from below the channel, or otherwise not within the limits of the channel. He refers to the provision in the contract that the government might test the measurement by soundings. This, of course, would not authorize the government to change the mode of measurement specified in the contract. The language is so precise that the measurement is to be by scow loads, as to exclude any other mode of measurement. It appears, from the evidence of H. D. Johnson, the agent of the United States, that the mode adopted by Captain Graham, while he was in charge of the work, of ascertaining the quantity, was by soundings to determine the depth of the channel, although at first he paid the claimants according to the scow load. If Captain Graham's mode be adopted, it will establish the soundings as the proper way in which to ascertain the quantity excavated, of which it is sufficient to say that such is not the language of the contract. To test the measurement by soundings, does not establish the soundings as the contract mode of measurement. The United States may make use of soundings for the purpose of showing that the number of scow loads alleged to have been removed by the claimant is incorrect; but this mode cannot be substituted for the measurement by scow loads. *And it is not shown that the soundings show the claimant's measurement to be incorrect.* Besides, the test by soundings might be used to ascertain if the channel were excavated to the proper depth, and in the proper place.

The provision, relating to the test by soundings, is by no means nugatory; for by taking the quantity shown by the soundings, and adding to it the proper per-centage, the accuracy of the report of the inspector, and of the quantity claimed by the contractors, might be ascertained. It appears, also, that when payments were made according to Captain Graham's estimate, the contractors *protested against it as incorrect.*

It is urged that some of the scow loads were taken from a lower depth than twelve feet, and that it does not appear that they were thus taken by direction of Captain Barnard; and we have been

referred to the testimony of Colonel Abert upon this point. But Colonel Abert does not say that any portion was taken from a point below twelve feet. His evidence, so far as it bears upon the state of things in this case, is, that where there is a tide (as there is in Mobile bay) or much current, the boat will rise and fall, the filling in from the sides would be the greatest, and the excavated bottom will be uneven; that after calculating the material to be excavated, in order to obtain the desired depth, and the actual amount to be removed, the following per-centages are to be added: If the bottom be sand, 100 per cent.; if it be mud, 60 per cent.; if it be mud and sand, 80 per cent.; and that it would not be safe to add less than 50 per cent. for any firm bottom. Of what character the bottom of the channel was in this case it does not appear; but Colonel Abert was asked to state what would be the difference between the measurement of the contents of a given channel, and the measurement of the materials after the excavation. Although he distinctly answers the question, yet his testimony shows only what the difference would be according to the qualities of the bottom of the channel. It has no material bearing on the case, both because it does not appear of what character the bottom of the channel was, nor what was the measurement of the channel before the excavation. Even if there were evidence on these points, still it could not affect the provision that the measurement should be by scow loads, but could only serve as a test to determine the accuracy of the quantity claimed by the contractors; a test, by the way, which it does not appear was ever adopted by the government officers.

Our opinion is, that the claimants are entitled to the balance we have mentioned, which is proved by the evidence. Of this sum, C. H. Minge, P. T. Ellicott, and the devisee of Charles Brodie, (Lucretia A. Brodie,) are entitled to..... \$6,919 78
Minge and Ellicott to..... 13,913 02

Making the sum of..... 20,832 80

For which we report a bill.

COLLIER H. MINGE, PHILIP T. ELLICOTT, AND LUCRETIA A. BRODIE vs. THE UNITED STATES.

Judge Blackford's dissenting opinion.

I dissent from the judgment in this case.

This is a claim for work and labor, performed under the following written contract:

"Memorandum of an agreement made by Captain J. G. Barnard, of the corps of engineers, on the part of the United States, with C. H. Minge and P. T. Ellicott, on the fifth day of December, 1838.

"1st. It was agreed that C. H. Minge and P. T. Ellicott shall build, or cause to be built, one or more steam dredging machines, as soon as practicable, to be used in the excavation of the channel of the Dog river bar, harbor of Mobile.

"2d. It was agreed that the said _____, on the completion of the said dredging machines, shall cause such excavations in the aforesaid channel of the Dog river bar as may be required to be done by the said Captain J. G. Barnard, or other agent of the United States, provided that such excavations shall not be carried deeper than twelve feet at low water.

"3d. It was agreed that the said Captain J. G. Barnard shall pay, or cause to be paid, monthly, to the said C. H. Minge and P. T. Ellicott, the sum of eighty cents per cubic yard of earth excavated from the aforesaid channel; the number of cubic yards to be ascertained by exact measurement made by the said Captain J. G. Barnard, or other agent of the United States.

"4th. It was agreed that the said C. H. Minge and P. T. Ellicott shall cause their operations to be prosecuted to the satisfaction of the said Captain J. G. Barnard, or other agent of the United States, and that any unnecessary delay shall subject the said C. H. Minge and P. T. Ellicott to the abrogation of this agreement, and to the forfeiture of any amount that may be due at the time the agreement shall be so abrogated.

"5th. This agreement to be held subject to the approval of the Secretary of War.

"(Done in triplicate.)

"J. G. BARNARD,

"*Capt. Engineers.*

"C. H. MINGE,

"PHIL. T. ELLICOTT.

"Signed, sealed, and delivered, in presence of—

"J. Y. RUSSELL,

"O. S. BENS.

"Mem. It is understood that the measurement shall be by the scow loads, if uniformly filled, and the work done to the satisfaction of said J. G. Barnard, or other agent of the United States; he reserving the privilege of testing the above measurement by soundings, and such other examination as he may think proper."

It is under the above contract that the work now sued for is alleged to have been performed. The accounts in the treasury for the work done by the contractors, and the payments they received, appear by the following extract from a report from the Treasury Department:

"It appears that, by act of Congress approved March 3, 1837, ch. 44, there was appropriated 'for the improvement of the harbor of Mobile, by removing the bar of the Choctaw Pass and Dog river bar,' the sum of 50,000 dollars; and by another act approved July 7, 1838, ch. 171, there was appropriated 'for continuing the improvement of Dog river bar and Choctaw Pass, in Mobile harbor, the further sum of 50,000 dollars.'"

"The contract of Messrs. Minge & Ellicott, of the 5th of December, 1838, had reference to the excavations to be made of the channel of Dog river bar; and the other party, Charles Brodie, was nowhere recognised as having anything to do with it.

"Whether the contractors commenced the execution of their con-

tract whilst Captain Barnard had charge of the work is unknown, as he made them no payment; the whole of the contract money having been paid by Captains Campbell, Graham, and George W. Hughes, of the topographical engineers, who successively had charge of the work. By copies of vouchers of their accounts, numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, herewith, all of which were admitted and passed to their credit without deduction on settlement, it appears that, under their contract, they excavated 58,759 cubic yards, and were paid therefor \$47,007 20.

"That the first payment was made on the 31st of May, 1839, and that the vouchers for payments for May, June, July, August and September, 1839, two in February, and for May and June, 1840, (Nos. 1, 2, 3, 4, 5, 6, 10, 11, 12 and 13,) of \$29,637 20 for excavating 37,046½ cubic yards, are accounts in which the United States is debited with the execution of the work 'as per contract,' with certificates of the officers in charge, that the quantities excavated are correct, *as by measurement made by them*, and receipts by the contractors for the amount paid *in full* for the same.

"That the vouchers for the payments for October, November and December, 1839, (Nos. 7, 8 and 9,) of \$7,310, for excavating 9, 137½ cubic yards, are accounts in which the debits and receipts are the same as the preceding; but the certificates of the quantities excavated are stated to be correct and just, according to *actual soundings* made by the certifying officers.

"And that a voucher for the last payment under the contract, on the 29th of June, 1840, (No. 14,) of \$10,060, for excavating 12,575 cubic yards, is an account evidently made out in the handwriting of P. T. Ellicott, in which the United States is debited with the quantity excavated at the contract price per yard, which is certified by the officer in charge, as having 'been actually executed for the United States,' and receipted by the contractors for a draft on New Orleans for the amount; but no reference is made to the contract, nor does the receipt express to be in full, as in all the other vouchers.

"Here the contract terminated, apparently, by *mutual consent*, as its *abrogation* is made one of the conditions of the execution of a *new contract*, on the 30th of June, 1840, between the same parties and Captain Hughes, the day after the last payment under the old one, a copy of which is transmitted herewith, marked B."

This report of the Treasury Department shows, that the earth excavated by the contractors, according to the measurement made by the engineers in charge of the work, was 58,759 cubic yards; for which work the government paid the contractors at the rate of 80 cents per cubic yard, the contract price. The amount thus paid was \$47,007 20.

The ground of this suit is, that the work should have been measured by scow loads; and that, as it was not so measured, the contractors have not been paid a sufficient sum for the work performed.

The majority of the court have sustained the suit, and rendered judgment for 13,913 dollars and 2 cents in favor of Minge & Ellicott, and for 6,919 dollars and 78 cents in favor of Mrs. Brodie. I cannot agree to that judgment.

The proper construction was put upon the contract, in my opinion,

by the officers having charge of the work. One part of the contract, it is true, says "that the measurement shall be by the scow loads;" but that clause is immediately modified by an express reservation of the privilege of the engineer "*of testing the above measurement by soundings, and such other examination as he may think proper to make.*" According to the latter clause, the engineer reserved the privilege of testing the measurement by soundings, &c.; that is, he had the right to resort, at any time, to a measurement by soundings, and to be governed in his payments by that measurement. Mr. Johnson's deposition in the case explains the matter very clearly. He says that the contractors measured by scow loads, and that the engineer measured by soundings. The measurement by scow loads exceeded the measurement by soundings. Now, I ask, which measurement was to govern? Was it not the measurement by soundings? I think it was; because, *by the express words of the contract*, the engineer reserved the right of testing by soundings the measurement of the work. He exercised that right, and the contractors were bound by his measurement by soundings.

It may be further observed that, by a previous part of the contract, the number of cubic yards of earth excavated was to be ascertained by exact measurement, made by an agent of the United States. There is nothing in the contract to affect that clause.

The treasury report, already referred to, shows that the proper officer measured the work done under said contract, and that the contractors have been paid, more than sixteen years ago, all that was due to them according to that measurement, and, as I have endeavored to show, that was the measurement by which the contractors were to be paid.

As to Mrs. Brodie, one of the claimants, it is necessary to notice that Charles Brodie, under whom she claims, is no party to the contract sued on.

When this case was formerly before the court, on the preliminary question as to ordering testimony, my view of the contract was not the same with that which I have just expressed. With the aid of the testimony since taken, I have re-examined the subject, and am now satisfied that the claimants are not entitled to recover.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1857.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany bill S. 582.]

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of O. H. Berryman and others, report:

Upon an examination of the action of the court in this case, the committee concur in the result to which they arrived, and report the bill without amendment and recommend its passage.

The opinion of the court and the dissenting opinion of Judge Blackford are hereto annexed and made a part of this report.

O. H. BERRYMAN vs. THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the court.

By the fourth section of the act of May 10, 1800, (2 Stat., 70, 71,) it is provided, that any vessel employed in the slave trade may be seized by any of the commissioned vessels of the United States, "together with her tackle, apparel, and guns, and the goods and effects, other than slaves, which shall be found on board, shall be forfeited, and may be proceeded against in any of the district or circuit courts, and shall be condemned for the use of the officers and crew of the vessel making the seizure, and be divided in the proportion directed in the case of prize." The act, of which the above is a section, relates exclusively to the slave trade. It gives the whole property to the captors, and makes no reference to any other act, except for the purpose of pointing out the manner in which the property, which belongs to the captors, shall be divided among them. It is to be divided "in the proportion directed in the case of prize." This division is provided for by the sixth section of the act of April 23, 1800.—(2 Stat., 52.) This act is "An act for the better government of the navy." By the fifth section, it provides, that "the proceeds of all ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the

vessel or vessels making the capture, be the sole property of the captors ; and, when of inferior force, shall be divided equally between the United States and the officers and men making the capture." This act is in no other way connected with the act relating to the slave trade than that the fourth section of the latter refers to it for the distribution of the prize among the captors. The libel, in this case, was filed under the act of May 10, 1800, which prohibits any citizen of, or person residing in, the United States from owning any property in any vessel employed in the transportation of slaves from one foreign country to another. The subsequent act of May 2, 1807, (2 Stat., 426,) prohibited the importation of slaves into the United States after the 1st of January, 1808 ; but this act has no connexion with the question now before us.

By the eighth section of the act of March 3, 1849, (9 Stat., 378,) it is provided, that " all prize money arising from captures made by the vessels of the navy of the United States, received by the marshal, who shall make sale of such prizes, shall, within sixty days after such sale, deposit the net proceeds, after paying all charges, as now provided by law, into the treasury of the United States ; and all money now in the hands of prize agents shall also be deposited in the treasury, to be distributed as now provided by law ; such parts thereof as may belong to the officers and crews of the vessels of the navy shall be paid to them under the direction of the Secretary of the Navy." However defective the grammatical construction of this section may be, its object clearly was to provide that the marshal who should make sale of the prizes should deposit the net proceeds, after paying all charges, in the treasury.

On the 24th day of January, 1848, the claimant, then commanding the United States schooner *On-ka-hy-e*, captured the *bargue* "*Laurens*," alleged to be then engaged in the slave trade, contrary to the laws of the United States. She was brought into the port of New York, and was there libelled by the district attorney for this cause. The result of the proceedings was, that on the 3d of July, 1849, the *barque*, and the effects on board of her, were adjudged by the district court to be forfeited.

On the 8th of January, 1851, Edward Williams and others, of the crew of the *On-ka-hy-e*, having prayed for a decree of distribution of the condemned property and its proceeds, Smith Baker, esq., was appointed by the court a commissioner for the purpose of ascertaining the amount subject to distribution, the persons entitled as distributees, and the several sums to which they are respectively entitled. On the 16th of May, 1851, the commissioner made his report, in which, after expressing his opinion that the question was not free from embarrassment, he submitted that, inasmuch as the captured vessel was of inferior force to that of the captors, the proceeds of the prize should be divided equally between the United States and the officers and crew who made the capture. He further reported, that " so far as their rights (the captors) and interests are concerned, the fund should, of course, be considered as in the treasury of the United States, nor can there be any doubt that it will be, as it ought to be, paid to them therefrom by the proper authority, under and in compliance with a

decree of distribution, herein to be made by the court." "So far, therefore, as this report is concerned, the commissioner considers it his duty to regard the fund as subject to distribution in precisely the same manner as though the attorney of the libellants had enforced a compliance by the marshal with the rule of this court, in the month of March, 1848, and the money were now in the registry of this court." The report then, after some calculations, which it is unnecessary to notice further, finds the sum remaining subject to distribution to be \$20,664 69. On the 16th of May, 1851, the decree of the court was passed confirming the report of the commissioner.—(See folio 72 of the exemplification of the proceedings.)

Now the decree and judgment of the district court were conclusive, being unreversed as to all matters properly within the jurisdiction of the court. It was within the jurisdiction of the court to adjudge that the barque "Laurens" was lawful prize, and to condemn her as such; and to adjudge, as the question came properly before the court, that the proceeds of the prize were, in law, in the treasury of the United States, and were subject to distribution. It was also competent for the court to determine that the sum of one thousand dollars, paid to the counsel, was properly charged upon the fund. These matters were settled by the decree of the court, substantially confirming the report of the commissioner. What the judgment of the court was is too clear to admit of question. But the court also made a decree of distribution of the proceeds of the prize. This was clearly not within the jurisdiction of the court, if it was intended to include anything beyond the money in the registry. How can we hold that the court had jurisdiction to make a decree of distribution, when the 8th section of the act of March 3, 1849, before referred to, expressly provides that such part of the proceeds as may belong to the officers and crew of the vessels of the navy, "shall be paid to them under the direction of the Secretary of the Navy." This act was in force at the time the decree was made, and as the money is to be paid under the direction of the Secretary of the Navy, this provision excludes the idea that it is to be paid according to the decree of the district court. It is the Secretary of the Navy who is to direct the distribution of the money, and not the district court. His duty is, in our opinion, perfectly plain. By the act of May 10, 1800, the whole property of the prize subject to distribution belonged to the captors. As it was their property, the whole of it was to be divided in the proportion directed in the case of prize. That is pointed out by the 6th section of the act of April 20, 1800, and the sum of \$20,664 69 should be paid to the officers and crew of the On-ka-hy-e, in the proportion there prescribed. Whether the sum of \$20,664 69 is comprehended in the decree or not, the same result must follow. If it was not included in the decree, then the money remains in the treasury, and is subject to distribution according to law. No one denies that the decree of the court is final as to all matters within its jurisdiction. It necessarily follows, then, that the money is in the treasury, for it has been so adjudged, and all parties are concluded by that judgment. The judgment cannot be regarded as conclusive

when it makes for the United States, and not conclusive when it makes against them.

It seems to have been supposed that this was an attempt to charge the United States on account of the defalcation of the marshal. But such is not the claim. It is the United States who set up the default of their officer and agent, the marshal, as a defence to the claim. Whether this makes any difference, or what the proceedings were against the marshal, is immaterial now to consider. The judgment of the district court settles that the sum of \$20,664 69 is in the treasury for the purpose of distribution. The manner in which the sum was to be distributed was to be determined by the Secretary of the Navy. That officer declined the payment of the money without an appropriation by Congress. He immediately adopted what he considered the more judicious course, as the matter was in litigation.

Our judgment is, that the claimant and the persons whom he represents are entitled by law to recover the sum of \$20,664 69, to be divided among them in the proportion directed in the case of prize, and we report a bill accordingly.

A BILL for the relief of Otway H. Berryman and others.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be paid, out of any money in the treasury not otherwise appropriated, the sum of twenty thousand six hundred and sixty-four dollars and sixty-nine cents to Otway H. Berryman and the other officers and crew of the United States schooner On-ka-hy-e, being the balance of the prize money obtained by the capture of the barque "Laurens" by the said schooner, in the year 1848, and that said sum of twenty thousand six hundred and sixty-four dollars and sixty-nine cents be distributed among said officers and crew in such proportions as shall be designated by the Secretary of the Navy, according to the provisions of the sixth section of the act of April 23, 1800, entitled "An act for the government of the navy of the United States."

BERRYMAN AND OTHERS vs. THE UNITED STATES.

Judge BLACKFORD's dissenting opinion :

I dissent from the judgment of the court in this case.

The claimants are the officers and crew of the schooner Onkahye, a commissioned vessel of the United States of America, belonging to the navy.

This schooner, in January, 1848, captured, on the high seas, the barque Lawrence, charged with being engaged in the slave trade.

In March, 1848, the said barque was brought into the port of New

York, by the captors, for adjudication, she having on board eighteen thousand nine hundred and ninety-two dollars in specie.

Afterwards, on the 15th of said month of March, a libel was filed in the district court of the United States for the southern district of New York, by the district attorney, against the said barque and her cargo.

Upon the filing of the libel, the usual process was issued, commanding the marshal (Ely Moore) "to attach the said barque, her tackle, guns, goods, and effects, found on board thereof, and specie, and to detain the same in his custody until the further order of the court," &c.,

On the said 15th of March, the marshal, (Moore,) in obedience to said process, attached said barque, "her tackle, &c., and the goods and effects found on board thereof, therein described."

On the 21st of April, 1849, the court ordered the said marshal (Moore) to pay said specie, being about twenty thousand dollars, into the registry of the court.

On the 25th of the same month of April, the court ordered that said marshal (Moore) pay into the court eighteen thousand nine hundred and ninety-two dollars, being the amount of said specie, on or before the 1st of May then next following, or that an attachment issue against him.

On the same 25th of April, the court also ordered one Peck, a deputy marshal, to pay said money into court, or that he be attached.

On the 1st of May, 1849, the said money not having been paid into the registry, the court ordered an attachment to issue against said marshal, (Moore,) returnable forthwith; and on the next day an attachment was also ordered against the said deputy marshal.

Various answers to the libel were filed, and several depositions taken.

The said district court, on the 3d of July, 1849, rendered the following decree:

"It is considered by the court, that the said barque Lawrence, at the time of her arrest and capture, as set forth in the pleadings, being a vessel belonging to the United States, was employed and made use of in the transportation or carrying of slaves from one foreign country or place to another, to wit: from the western coast of Africa to Brazil, within the intent and meaning of the act of Congress, approved May 10, 1800, in such case made and provided. Wherefore, it is ordered, adjudged, and decreed by the court, that the said barque Lawrence, her tackle, furniture, appurtenances, and the goods, property, and effects, found laden on board her, be condemned and forfeited to the use of the United States, the libellants in this cause, pursuant to the provisions of the act of Congress in that behalf. And it is further ordered and decreed, that the libellants recover their taxed costs against the claimants who have intervened in this cause. And on motion of J. Prescott Hall, esq., proctor for the libellants, it is ordered that the clerk of this court issue a venditioni exponas against the said barque Lawrence, her tackle, apparel, and furniture, and the goods, property, and effects, found laden on board, and returnable on the first Tuesday of August next."

The following return was afterwards made to the said writ :

"In obedience to the above precept, I have sold the above-named vessel and cargo, and such sale amounts to four thousand seven hundred and twenty dollars and seven cents ; which sum I have paid to the clerk of this court, as I am above commanded.

"Dated this 8th day of November, 1849.

H. F. TALLMADGE, *U. S. Marshal.*"

Petitions of part of the crew of the capturing vessel having been filed, the court, on the 8th of January, 1851, made the following order :

"Upon the filing of the petition of intervention of John H. Wilkins and others, captors of the barque Lawrence, &c., (against which a final decree of condemnation has been made herein,) praying for a decree of distribution of the condemned property and its proceeds, according to law : It is ordered, that the usual monition do issue ; and it is further ordered, that a commission do issue herein, under the seal of this court, directed to Smith Barker, esq., counsellor at law, of the city of New York, appointing him prize commissioner herein. And it is further ordered, that the said commissioner do proceed with all reasonable diligence to take the testimony herein, conformably to the rules of this court, for the purpose of ascertaining the amount subject to distribution, the persons entitled as distributees, and the several sums to which they are respectively entitled ; and return the same into court, together with his report thereon, on or before the return day of the monition."

In May, 1851, the following report of the said prize commissioner was filed :

"Report of Smith Barker, the prize commissioner, appointed herein.

"To the Hon. Samuel R. Betts, judge of the district court of the United States for the southern district of New York :

"The report of Smith Barker, prize commissioner, duly appointed herein by order of the court, respectfully represents :

"That, in compliance with the requisitions of the commission to him issued, he has proceeded to take testimony concerning the subject-matter to him referred ; and the said testimony is duly returned into court, accompanying this report thereon.

"A final decree of condemnation having been pronounced herein by the court against the property captured, the questions remaining for determination are : 'how shall the captured and condemned property or its proceeds be divided ? and to whom shall it be paid as lawful distributees ? and in what proportions ?'

"And first, how shall the condemned property or its proceeds be distributed ?

"The testimony clearly establishes the fact of the superiority of the capturing force both in men and arms ; and, therefore, were this a prize of war, under the naval laws of the United States, the capture not resulting from any extraordinary hazard, or from the exercise of any great or unusual skill or bravery, there would be no doubt that

the prize, or its proceeds, would be subject to division and distribution, in equal proportions, between the government and the captors. But this was a capture made by a government vessel of a merchant vessel, found violating the laws of the United States which prohibit the slave trade, and a very serious question has arisen whether, under the terms of that law, the captors are not entitled to the entire proceeds of the prize.

"If the act of May 10, 1800, which is entitled 'An act in addition to the act entitled an act to prohibit the carrying on the slave trade from the United States to any foreign place or country,' were the only law of the United States under which this forfeiture has been incurred, it might perhaps be difficult to escape the conclusion that the captors would be entitled to the entire proceeds of the capture; and still more difficult would it be to avoid this result, were it not necessary in these proceedings to resort to, and be governed by, the provisions of the general law of April 23, 1800, entitled 'An act for the better government of the navy of the United States.'

"By the fourth section of the act of May 10, 1800, it is provided, 'that it shall and may be lawful for any of the commissioned vessels of the United States to seize and take any vessel employed in carrying on trade, business, or traffic, contrary to the true intent and meaning of this and the act to which this is an addition, and such vessel, together with her tackle, apparel, and guns, and the goods and effects (other than slaves) which shall be found on board, shall be forfeited, and may be proceeded against in any of the district or circuit courts, and shall be condemned *for the use of the officers and crew of the vessel making the seizure, and be divided in the proportion directed in the case of prize.*' Now, it may very fairly be contended, that the *division* here spoken of is a division among the 'officers and crew of the vessel making the seizure,' because the act certainly indicates *no other party* for whose use the prize is to be condemned. Nor is this construction at all weakened, but rather it is strengthened, by the provisions of the seventh section of the act, which reads as follows: 'That the forfeitures which shall hereafter be incurred under this act, or the said act to which this is an addition, *not otherwise disposed of*, shall accrue and be, one moiety thereof to the use of the informer, and the other moiety to the use of the United States, except where the prosecution shall be first instituted on behalf of the United States, in which case the whole shall be to their use.' Now the 1st, 2d, and 3d sections of the act provide for distinct cases of penalties and forfeitures, to be incurred by citizens having an interest in vessels employed in the slave trade, by citizens serving on board any vessel of the United States employed in the slave trade, and by citizens serving on board any foreign vessel in that employment. These are evidently the forfeitures alluded to in the seventh section as '*not otherwise disposed of*:' first, because for their recovery the mediation of an informer is supposed; and second, because in the sections imposing the forfeitures there are no provisions for their disposition.

"The forfeiture imposed by the fourth section, under which the prize in this case was taken and the condemnation had, *cannot* be alluded to in the seventh section: first, because it is not such a forfeiture as

is established by the aid of an informer ; and, second, because the disposition of that forfeiture is *otherwise* and especially provided for in the section imposing it, viz: the property 'shall be condemned for the use of the officers and crew making the seizure.'

"It is therefore apparent, that if the provisions of this act alone were to be consulted on the question of distribution, the captors would present a very strong claim to the entire proceeds of the capture. But in order to ascertain *the proportions* according to which the proceeds of the prize are to be distributed among the lawful distributees, it is necessary to resort to the provisions of the general act 'for the better government of the navy of the United States,' passed April 23, 1800 ; and here we find, in the fifth section of that act, the following sweeping provision : 'That the proceeds of *all* ships and vessels, and the goods taken on board of them, which shall be adjudged good prize, shall, when of equal or superior force to the vessel or vessels making the capture, be the sole property of the captors, and when of inferior force, shall be divided equally between the United States and officers and men making the capture.' To this it may perhaps be answered, that this law evidently refers only to captures made in time of war, and also, that being a law seventeen days *earlier* in date than that under which this capture was made, its provisions cannot be construed to control those of the later act. But when it is considered that no good reason can be urged in favor of a law entitling the captors in a case like this to the *entire* proceeds of the capture, which is not of equal force in every other case provided by the laws in which they are entitled to a *moiety* only, it is proper to consider the provisions of the act of April 23, not as controlling, but as explanatory of those of the act of May 10, 1800. Had the latter act declared that the property should be condemned to the *exclusive* 'use of the officers and crew of the vessel making the capture,' 'to be divided among them' 'in the proportion directed in the case of prize,' it would be free from all ambiguity, and require no explanation from the act passed seventeen days before, directing 'the proportion in the case of prize.' But the words 'exclusive' and 'among them' are not in the law, and hence the distributees are not distinctly indicated by the law. This being the case, the general provision in relation to the division of the proceeds of *all prizes*, contained in the fifth section of the act of April 23, may very properly be regarded as explanatory of the provision of the fourth section of the act of the 10th May following.

"On the 2d of March, 1807, Congress passed an act 'to prohibit the importation of slaves into the United States from and after the first of January, 1808.' By the seventh section of said act it is provided that the proceeds of vessels, &c., taken in contravention of the law, 'shall be divided equally between the United States and the officers and men who shall make the seizure.' The same provision is also contained in the first section of the act of April 20, 1818, being an act in addition to the one last mentioned ; and with much greater particularity is that provision declared in the first section of the act of March 3, 1819, entitled 'An act in addition to the acts prohibiting the slave trade.'"

" With these considerations, although it must be conceded that the question is not free from embarrassment, it is submitted, that inasmuch as the captured vessel was of inferior force to that of the captors, the proceeds of the prize should be divided equally between the United States and the officers and crew of the vessel which made the capture.

" The next question is, who are entitled to be distributees as captors?

" The testimony shows that the capture was made by the officers and crew of schooner Onkahye, a commissioned vessel of the United States of America, and belonging to the navy thereof. If any other public ship or vessel had been in sight at the time the capture was made by the officers and crew of the Onkahye, the officers and crew of such other ship or vessel would, in law, be considered as taking part in the capture, and under the seventh subdivision of section sixth of the act of April 23, 1800, would be entitled to share with the officers and crew of the Onkahye; but the testimony conclusively establishes the fact that no other vessel was in sight, and therefore the moiety of the proceeds of the condemned property subject to distribution among the captors should be divided according to the provisions of the said sixth section of the act last above cited.

" An authenticated copy of the muster-roll, showing the officers and men who were on board the Onkahye at the time of the capture, namely, on the 24th day of January, A. D. 1848, has been produced from the Navy Department, and will be found annexed to the testimony herewith reported. In accordance with that list and with the provisions of the law of 1800, a schedule of distribution will be found at the termination of this report.

" The property condemned herein as lawful prize by a decree of this court made on the 30th day of July, 1849, consisted of the barque Lawrence, her tackle, apparel, &c., and the effects found on board, which consisted of a quantity of specie, amounting to the sum of eighteen thousand nine hundred and ninety-two dollars.

" By the defalcation of the late marshal of the United States for the southern district of New York, the said specie never reached the registry of the court. It came into his custody in his official capacity, and was converted to other uses. It came into his possession in the month of March, 1848, and it does not appear that any attempt was made to enforce a compliance with the rule of the court, requiring its deposit in the registry of the court, until more than a year after that time. The record shows the proceedings which were then taken to obtain from him the fund, and the fruitlessness of all efforts to that end. The specie, when first received by the marshal or his deputy, was deposited in the Mechanics' Banking Association. It was paid out, it appears, from time to time, upon the checks of the deputy marshal, the deposit having been, at the request of the deputy, changed by the bank, and placed to his credit, instead of that of the marshal. An action is now pending in the State court against the bank in favor of the government, to compel a repayment of this fund, upon the ground of its illegal payment by the bank to the order of the deputy. Whether anything from any quarter, either from the bank or from the sureties upon the official bond of the marshal, will ever be realized to replace this fund thus diverted, is a question of interest to the

government, but in a pecuniary point of view cannot be so regarded to the captors. So far as their rights and interests are concerned, the fund should, of course, be considered as in the treasury of the United States; nor can there be any doubt that it will be, as it ought to be, paid to them therefrom, by the proper authority, under and in accordance with a decree of distribution herein to be made by the court.

"It will not, probably, for a moment, be contended that the captors should be delayed in their receipt of the moiety of the proceeds of the capture, to which the law entitles them, by reason of the defalcation of the agent of the government, who, in that capacity, was entrusted with its possession, and has not paid it over. If it would be right to delay the captors until the termination of the litigation now pending, or which may be hereafter pending, to recover the money, for the same reason they should be subjected to the hazards of the result of that litigation; and it cannot be supposed that such a proposition could be seriously entertained by any person. So far, therefore, as this report is concerned, the commissioner considers it his duty to regard this fund as a subject of distribution in precisely the same manner as though the attorney for the libellants had enforced a compliance by the marshal with the rule of this court in the month of March, 1848, and the money were now in the registry of the court.

"The specie condemned and subject to distribution herein amounts to..... \$18,992 00

"The gross proceeds of the sale of the vessel, with her tackle, apparel, &c., as appears by the return of the marshal to the writ of *venditioni exponas*, was..... 4,720 07

"Making a total of..... 23,712 07

"The proceeds of the sale were duly deposited in the registry of the court.

"It appears by the vouchers on file, and by a copy of the clerk's cash account, that large payments have, from time to time, been made from this fund, under the order of the court, to defray the various expenses attending the prosecution of the libel, and the costs and disbursements in the safe-keeping and sale of the property.

"By the aforesaid cash account of the clerk, which is annexed to the testimony reported herewith, it appears that the sums of cost, expenses, and disbursements so paid, under the order of court, amount, in the aggregate, to the sum of \$3,047 38.

"The prize property and its gross proceeds, as above stated, amount to..... \$23,712 07

"Deduct from this the amount of costs thus far incurred and paid..... 3,047 38

"And the sum remaining subject to distribution, after defraying the bills of cost, if any, not yet paid, together with the expense of these proceedings, is 20,664 69

"Your commissioner therefore reports that, after paying the costs,

if any still unpaid, incident to the proceedings upon the libel for condemnation of the prize property, and after paying the proper costs and charges incurred in the proceedings for a decree of distribution of the proceeds of said property condemned as lawful prize, the sum remaining of said sum of \$20,644 69 should be divided into two equal proportions; that one of the said moieties should remain in the treasury of the United States as a portion of the navy pension fund, to which fund the share of the proceeds of prize property to which the government is entitled is appropriated by an act of Congress, and that the other moiety should be paid to the captors, in accordance with the naval laws of the United States, which provide for the distribution of prize money. And it appearing that there now remains in registry of the court a portion of the proceeds of the prize property, amounting to the sum of \$1,672 69, that the costs and expenses above mentioned should be paid from that fund, and the balance, if any, be transferred to the treasury, in order that the distribution, under the decree of this court, to the captors entitled, may be made by the Navy Department of the government.

"And your commissioner, after a careful application of the rules of distribution established by the said naval laws of the United States, to the list of the officers and crew of the schooner On-ka-hy-e, who were on board of the said vessel at the time of the capture of the barque Lawrence, reports the following detail of distribution of that portion of the prize fund, which by law belongs to the captors:

"1st. To Otway H. Berryman, lieutenant and commander of the On-ka-hy-e at the time of the capture, three twentieths.

"2d. R. T. Renshaw, passed midshipman and acting master; to George Wells, lieutenant; to Alexander Robinson, assistant surgeon, each one third of four twentieths.

"3d. To Leonard Paulding, passed midshipman; A. T. Byrens, midshipman; Frank Zantinger, captain's clerk, each one third of three twentieths and a half.

"4th. To Edward Williams, carpenter's mate; John Hopkins, quartermaster; W. B. Miller, do.; and Henry Stamworth, ship's cook, each one-fourth of two-twentieths and a half.

"5th. To William Thompson, ordinary seaman; Wellington Lancaster, do.; George Wilson, do.; Robert Wilson, seaman; Charles Smith, 2d, do.; Richard Mintough, ordinary seaman; William Howard, do.; Thomas Moore, do.; Joseph Webster, do.; Bradford Potter, do.; Thomas H. Disney, seaman; James Wilson, do.; John H. Wilkins, ordinary seaman; John Bogert, landsman; William O. Coates, first class boy; Charles Betts, ordinary seaman; John Pearsall, do.; Charles Smith, 3d, do.; William Potter, seaman; Joseph Relatic, do.; Francis Smith, do.; Edward Smith, do.; Joseph Ward, do.; John M. Kay, do.; and to William C. Leeson, do., each one twenty-fifth of seven twentieths.

"All which is respectfully submitted.

"SMITH BARKER,
"Commissioner."

Filed May 16, 1851.

The commissioner in the above report expresses the following opinions:

1. That the fund for distribution should be distributed as follows: One half to the United States, and the other half to the captors.

2. That the \$18,992 in specie, *which the marshal failed to pay into the registry, but converted to his own use*, should be considered as in the treasury of the United States, subject to a decree of distribution.

On the same day on which said report was filed, the court rendered a decree as follows:

"This cause having been submitted on the pleadings and testimony and the report of Smith Barker, esq., counsellor at law, prize commissioner duly appointed by the court, and the same having been duly read and considered, it is ordered and decreed that the clerk of the court do pay out of the fund in the registry the costs and expenses which may yet remain unpaid in the proceedings on the original libel, together with the costs and expenses upon the libels for distribution of the proceeds of the property condemned, with the commissioner's fees herein allowed by the court, and that the balance, if any, remaining of said fund, portion of the proceeds of the said prize property, be paid into the treasury of the United States for distribution thereupon, in conformity with the report of the commissioner of prize in that behalf, as follows:

"Of the moiety of the prize proceeds to which the captors are entitled: 1st. To Otway H. Berryman, lieutenant and commanding officer of the capturing vessel, three twentieths. 2d. To R. J. Renshaw, passed midshipman and acting master; George Wells, lieutenant; Alexander Robinson, assistant surgeon, each one third of four twentieths. 3d. To Leonard Paulding, passed midshipman; A. T. Byrens, midshipman; Frank Zantzing, captain's clerk, each one third of three twentieths and a half. 4th. To Edward Williams, carpenter's mate; John Hopkins, quartermaster; W. B. Miller, quartermaster; Henry Stamworth, ship's cook, each one fourth of two twentieths and a half. 5th. To William Thompson, ordinary seaman; Wellington Lancaster, do.; George Wilson, do.; Richard Mintough, do.; William Howard, do.; Thomas Moore, do.; Joseph Wilson, do.; Bradford Potter, do.; Charles Betts, do.; John Pearsall, do.; Charles Smith, 3d, do.; Robert Wilson, do.; Charles Smith, 2d, do.; James Wilson, do.; Thomas H. Disney, do.; John Retalic, do.; William Potter, do.; Francis Smith, do.; Edward Smith, do.; Joseph Ward, do.; John McKay, do.; William C. Leeson, do.; John Bogert, landsman, do.; William C. Coles, first class boy; John H. Wilkins, ordinary seaman, each one twenty-fifth of seven twentieths.

"And it is further ordered, that the prize commissioner herein be allowed and paid, as his commission in the premises, three per cent. upon the amount of property and its proceeds condemned by the decree of the court."

The first point decided by the majority of this court is, that the district court of the United States confirmed, substantially, the report of the commissioner, (Barker.) I differ from the court on that point. That this matter may be well understood, I have copied into this opinion both the report of the commissioner and the decree of the district

court. (See the transcript of the record of the district court filed with the papers in this court.)

The report of the commissioner says: That the specie, \$18,992, [*which, by the defalcation of Moore, the marshal, was not paid into the registry of the court, nor into the treasury of the United States,*] ought to be considered as in the treasury of the United States, and ought to be paid therefrom to the captors in accordance with a decree of distribution to be rendered by the court. The same report also says, that there was a sum of \$20,664 subject to distribution.

Now, I think it is clear that the decree of distribution, rendered by the district court, does not confirm, either in form or substance, those erroneous opinions of the commissioner.

It will be recollected that, as before stated, the Lawrence and cargo were sold by Tallmadge, the successor of the defaulting marshal, for \$4,720 07, which sum Tallmadge, as marshal, paid into the registry of the court. *That was the only money arising from the prize that was ever paid into the registry.*

The decree of the district court, and which is hereinbefore copied, is substantially as follows: It is ordered and decreed that the clerk pay, out of the fund in the registry, (that is, as I understand it, out of the \$4,720 07,) the costs * * * * *; and that the balance, if any, remaining of said fund (that is, as I understand it, of the \$4,720 07) * * * * * be paid into the treasury of the United States for distribution thereupon, in conformity with the report of the commissioner of prize in that behalf, as follows: Of the moiety of the prize proceeds, &c.

I will not dwell upon this matter. The decree does not, in the remotest manner, countenance the erroneous opinion of the commissioner, that the \$18,992, conveyed by the marshal (Moore) to his own use, ought to be considered to be in the treasury of the United States for distribution. Nor does the decree sanction the erroneous statement of the commissioner, that there was the sum of \$20,664 69 subject to distribution. All the decree does is merely to order, that, after deducting the costs and expenses from the \$4,720 07, paid into the registry by Tallmadge, the balance should be paid by the clerk into the treasury of the United States for distribution, which balance was \$1,672 69, less the subsequent expenses.

The majority of the court also decides, that the district court of the United States had no jurisdiction to render the judgment of distribution.

I shall not stop to inquire whether the district court had such jurisdiction or not. It is a question of no importance in this case. The sum to be distributed, according to the facts and the order of the court, was only \$1,672 69; and it does not even appear that that small sum was ever paid into the treasury of the United States.

There is an act of Congress, approved March 3, 1849, as follows:

"That from and after the passage of this act, all prize money arising from captures made by the vessels of the navy of the United States, received by the marshal who shall make sale of such prizes, shall, within sixty days after such sale, deposit the net proceeds, after paying all charges, as now provided by law, into the treasury

of the United States ; and all money now in the hands of prize agents shall also be deposited in the treasury, to be distributed as now provided by law ; such part thereof as may belong to the officers and crews of the vessels of the navy, shall be paid to them under the direction of the Secretary of the Navy ; and the law authorizing the appointment of prize agents is hereby repealed."—(9th Stat. at Large, p. 378.)

Now admitting, for argument's sake, that this act of Congress, as the claimants contend, takes from the district court the authority of saying how prize money shall be distributed, and gives that power to the Secretary of the Navy, I am at a loss to know how the Court of Claims has anything to do with the subject. If the district courts of the United States are divested of jurisdiction in such cases, because the act of 1849 gives the jurisdiction to the Secretary of the Navy, the same act, for the same reason, excludes the Court of Claims of any jurisdiction over the matter. The Court of Claims is a court of limited jurisdiction, and can take no cognizance of any matter which, by law, is referred to another tribunal.

Again, there is no liability of the United States in these cases of prize, except for the payment, to the parties entitled, of the prize money *actually paid into the treasury*. Now, there is no allegation in the petition of the claimants, nor is there any evidence, that any part of the prize money in question has been received by the United States, or been paid into their treasury. The decision of the majority of the court is against the government for the sum of \$20,664 69. That sum is made up of two items, namely, the \$18,992, which the marshal (Moore) converted to his own use, and of the \$1,672 69, the balance of the proceeds of the sale of the *Lawrence* and cargo. As to the item of \$18,992, it is impossible, in my opinion, to make the government liable for that. No part of that money, *owing to the marshal's defalcation*, ever reached the registry of the court, or the treasury of the United States. If the government is liable for that large sum embezzled by the marshal, it is because there is an obligation on the part of the government to save all persons harmless against the official misconduct of its ministerial officers. I recognize no such principle. Judge Story takes the correct view of this subject. The following is his language: "In the next place, as to the liability of public agents for torts or wrongs done in the course of their agency, it is plain that the government itself is not responsible for the misfeasances, or wrongs, or negligences, or omissions of duty of the subordinate officers or agents employed in the public service ; for it does not undertake to guaranty to any persons the fidelity of any of the officers or agents whom it employs ; since that would involve it, in all its operations, in endless embarrassments, and difficulties, and losses, which would be subversive of the public interests ; and, indeed, laches are never imputable to the government."—(Story on Agency, sec. 319.) The claimants are the losers either of the whole or of the one half of the \$18,992. The remedy, if any, for such loss, is not against the United States, but against the defaulting marshal (Moore) and his sureties, on their bond, or against the marshal alone, or against any other person to whose default the loss can be traced. If there is

no such remedy, that is no reason that the government should pay over money which it never received.

With regard to the other item of \$1,672 69, there is no allegation in the petition, nor is there any proof, as before said, of its payment into the treasury of the United States. It is true, the district court ordered that balance, less the subsequent expenses, to be paid into the treasury; but that is the last we hear of it. Were we even to suppose that the clerk complied with the order, and paid said small balance into the treasury, we should be also bound to suppose, at the same time, that the money was paid over by the proper department to the persons entitled to it. But we have no right to indulge in suppositions on the subject. If the money was paid into the treasury, the claimants should show it.

The claimants, in my opinion, have no right against the government to either of the items which make up their large claim of \$20,664 69; nor have they any right against the government to any part of that claim. A sufficient reason for that opinion, were there no other, is, *that there is no proof that a single dollar of said money was ever paid into the treasury of the United States.*

For the foregoing reasons, I dissent from the judgment of the court in this case.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 10, 1857.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany bill H. R. No. 490.]



The Committee on Pensions, to whom was referred H. R. 490, for the relief of Roxana Kimball, have had the same under consideration, and submit the following report :

It appears of record that the husband of the petitioner was placed on pension roll 1817, and drew pension from 1815 ; that he failed to comply with the law of 1819, and for such failure there is no satisfactory reason assigned. In 1839 he applied for pension ; the department offered to restore him to the pension list, but refused the arrears claimed from 1819 to 1839, from which decision he appealed to Congress, and by reports of the proper committee the decision of the War Department was sustained. Now, after a lapse of fourteen years, his widow, Mrs. Roxana Kimball, claims the arrears thus denied. Your committee cannot find any additional evidence in this case on which to found a report disagreeing with several reports made in the years 1842 and 1843 by Congress, rejecting this claim, and believe that no merit or justice is connected with the demand made by petitioner, therefore recommend the following resolution :

Resolved, That the prayer of the petitioner be denied.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1857.—Submitted and ordered to be printed.

Mr. CLAY made the following

REPORT.

The Committee on Commerce, to whom was referred the petition of S. G. Tinkham and others, owners of the fishing schooner *St. Lawrence*, of Cape Porpoise, Maine, praying to be allowed the bounty they would have been entitled to had their schooner been inspected previous to her first voyage, report against the prayer of the petitioners, for the reasons set forth in enclosed letters of the Secretary of the Treasury, (numbered 1 and 2,) the first addressed to the collector of the district of Kennebec, and the other to Mr. Clay, and ask that the report be printed. They recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioners be rejected.

No. 1.

TREASURY DEPARTMENT,
December 24, 1856.

SIR: Your letter of the 17th instant was duly received, with estimates of fishing bounties in duplicate, and statement of the case of the *John Holbrook*, where bounty paid by you last season has not been passed to your credit, for the supposed reason that the Commissioner of Customs has not found the instructions of February 20, 1852, complied with. On reference of your letter to that officer for explanation, I understand from him that he has not finally decided the proofs to be insufficient in that case, and he will advise you on the subject.

The occasion for directing the First Auditor, before adjusting the bounty accounts of the last fishing season, (that of 1855,) to call for all the proofs on which payment has been made, was the representations repeatedly made here that some collectors did not require the proofs presented by the regulations to be produced, while others vigorously exacted them. The only mode of ascertaining whether such alleged irregularities existed in the several districts was to call for and examine the original proofs. I learn from the accounting officers that, so far as they have been able to complete this examination, they have found no verification of these representations, and that it has not ap-

peared that any collector has undertaken to dispense with the regulations so as prevent allowance of payment.

The case of the *St. Lawrence*, stated in your letter, illustrates the matter. The regulations required a previous inspection of the vessel in a particular manner. This inspection you propose to dispense with, and should you pay the allowance without regard to the regulations in this respect, you could not be properly allowed for any such payment. For a full explanation of the course to be pursued in such cases I beg to refer you to "regulations and decisions" of June 1, 1856, No. 67, section 7.

I have referred your estimate to the Commissioner of Customs to cause remittances to be made to the assistant treasurer, with which you will be charged for the amount, deducting the allowance to the *St. Lawrence*, and sent the duplicate to the assistant treasurer to verify your draft, for the other cases.

You are authorized on and after the 31st instant to draw on the assistant treasurer at Boston, in favor of each person lawfully entitled to receive these allowances, except that of the *St. Lawrence*. Your draft will be made in the same manner and on the same conditions as heretofore.

Very respectfully, your obedient servant,
JAMES GUTHRIE,
Secretary of the Treasury.

JOHN COUSENS, Esq.,
Collector of the customs, Kennebunk, Maine.

No. 2.

TREASURY DEPARTMENT,
January 26, 1857.

SIR: I have the honor to return herewith the petition of the owners of the schooner *St. Lawrence*, of Cape Porpoise, for the allowance of fishing bounty, left here this morning, together with a copy of the letter of the collector of Kennebunk, urging the allowance of this claim, and of my reply, dated 24th of December last.

The regulation requiring all vessels intended to pursue the cod-fishery for bounty to be previously inspected by the proper officer of the customs, I understand, is nearly quite coeval with the original bounty act of 1792. Unless some security for good faith in the equipment of vessels for the fishery had been provided, it seems obvious that all claims to bounty would rest solely upon the consciences of the claimants without check or verification of the facts.

For many years, so far back as existing records extend, it appears that this regulation has been the subject of much correspondence with collectors in special cases. The only relaxation that has been sanctioned by the department, so far as I can find, is, that where the want of inspection is clearly proved to have arisen from the delinquency or want of official fidelity of the officer whose duty it was to make and certify the fact of inspection, the claimants ought not to be made to suffer for his fault; and where such a case has been clearly

established, the regulation has been waived. But I can find no case where this department has waived this condition on account of the ignorance, mistake, or misfortune of the claimant. It seems always to have been regarded as an indispensable preliminary, well known in all fishing communities, the want of which, however plausibly explained by the claimant or the collector whose sympathy in such communities is generally with the claimant, is a grave ground of suspicion.

In the case of the *St. Lawrence*, it is clear, from the facts reported, that the inspector, when applied to, could not certify this vessel to be properly equipped. She had not at that time a sufficient crew for a vessel of her tonnage, which is the most important and difficult part of the equipment of a fishing vessel, and especially important in cases of bounty, payable according to the tonnage of the vessel. No cause is given why she was not inspected after the crew was completed. There is, therefore, no ground for relaxing the regulation by this department.

Very respectfully, your obedient servant,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. C. C. CLAY, JR.,
Senate of United States.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1857.—Submitted and ordered to be printed.

Mr. FISH made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Commodore William Mervine and other officers attached to the United States Pacific squadron, praying for an increase of compensation, having had the same under consideration, report :

That the memorialists allege that they find their present pay is inadequate to their support, in consequence of the high price of provisions, clothing, mess stores, &c., on that station, which they state to be at least fifty per cent. more than upon any other, and that many of them have large families to support. They urge in behalf of their petition the fact stated by them, that officers belonging to the coast survey and revenue marine are allowed their mess bills by the Treasury Department, in addition to their salaries; and they appeal, as a precedent, to the grant made some years since to the officers and men who served on the Pacific station during the late war with Mexico.

Without entering at this time upon a consideration of the question whether the pay bill of the navy affords an adequate compensation, or whether it may not need revision, the committee are forced to believe that there must be some mistake in the statement of the petition with regard to the relative price (at the present time at least) of provisions, clothing, &c., on the Pacific coast, as compared with the Atlantic ports. A comparison of the price currents of San Francisco and of New York does not exhibit the same difference as formerly existed, the cost of the means of subsistence and of clothing, &c., in the two places is being equalized; and with respect to many articles the market of San Francisco is as low and in some cases lower than that of New York.

A statement has been submitted to the committee of the prices paid in California by the Treasury Department for rations for the use of the revenue service during the years 1853, 1854, 1855, and 1856, down to (including) the month of October last. The average cost of these rations in 1853 was 48½ cents; in 1856 it was less than 34 cents. While this statement shows the decline going on in California prices of the means of subsistence, it may not give an accurate idea of the price at which the same articles might be purchased in the same

market by individuals. There, as elsewhere, government is apt to buy at much higher rates than citizens pay.

It is not within the province of this committee to scrutinize the policy of the Treasury Department in the compensation or the allowances which it may make to its officers or agents; but, assuming the fact to be as stated in the petition, the committee can imagine that there may be reasons for the allowance which the petitioners state that that department makes to those officers in its service on the Pacific coast that are not applicable to officers attached to a regular squadron engaged in the regular routine duty of the naval service.

The allowance to the officers and men employed on the Pacific station during the Mexican war, (which the petitioners also cite as a precedent,) was urged and obtained during a period when a very great disparity did exist between the money value of all the means and necessities of life in California and in the Atlantic States. With the disappearance of the reason the force of the precedent ceases.

The committee believe, moreover, that had Congress and the country foreseen all the consequences which have flown from that act the gratuity would not have been granted, even under the urgent reasons upon which it was asked.

It may also well be questioned whether the policy of the government in its rates of compensation to those engaged in the various branches of its service in California, and on the Pacific coast, and in the prices which it has paid for materials, and labor, and services in that region has not contributed largely to exaggerate and to uphold the extravagance of price which the circumstances of that country rendered inevitable at the time when it first became a part of our country. If this be so, justice to the citizens of that region demands that they be relieved from the burden which such a policy must continue to impose upon them, and that the discrimination which has been made be abandoned.

It is with reluctance that the committee feel constrained to withhold their assent from an appeal by gallant officers, creditably discharging their duties on a distant station. But, in the opinion of the committee, uniformity of compensation is essential to the efficiency and subordination of the service, and to the contentment and satisfaction of those engaged in its duties. All special legislation for the benefit of any particular class or set is subversive of these ends.

The views of the committee on the system of extra compensation and special allowances are more fully set forth in a report this day made to the Senate upon the application of Lieutenant J. M. Brooke and others, engaged in late north Pacific surveying expedition.

They recommend the adoption of the following resolution :

Resolved, That the prayer of the petitioners be denied.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1857.—Submitted, and ordered to be printed.

Mr. FISH made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of William Aitken, James Kelley, and ninety others who served in the Japan expedition under Commodore Perry, asking extra compensation similar to that allowed to the officers and crews of vessels of the navy stationed in the Pacific ocean in the years 1846 to 1849, report:

That it does not appear from the petition in what capacity, or on board of what vessel, the petitioners served. The only reason urged for the extra compensation that is asked, is, that "services important to the commercial interests of the country, and honorable to the flag of the national government, were rendered by that squadron during a long cruise in an unhealthy climate."

At the first session of the present Congress the committee reported against allowing extra compensation to the officers of the Japan expedition.—(Report 265, 1st session, 34th Congress.) They see nothing whatever, either in the petition or in the nature of the services of this expedition, to sustain a demand for increased compensation either to the officers or the men.

It is understood that the adoption of the principle of extra allowance asked by the petition to the Japan squadron, during its service, would involve an expenditure of about one and a half million of dollars in addition to the compensation already paid, which has amounted to \$1,798,214 68.

The Secretary of the Navy, in a letter recently written to the chairman of the Committee on Naval Affairs in the House of Representatives, says: "My experience and observation in the case of extra pay to sailors who served in the Pacific during the Mexican war convince me that agents and speculators get nearly the whole fund. Out of the several hundred thousand dollars paid, I am perfectly satisfied that the sailors received a mere pittance. I cannot, therefore, recommend legislation in their case."

The petition, in the case under consideration, bears ninety-two names upon it, all, apparently, written by the same hand.

The committee are of opinion that the petition should not be granted, and recommend the following resolution:

Resolved, That the prayer of the petition be denied.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1857.—Submitted and ordered to be printed.

Mr. FISH made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Commander Thomas J. Page, in behalf of himself and other officers of the United States steamer Water-Witch, recently engaged in the exploration and survey of the river "La Plata" and its tributaries, asking increased compensation, report:

That after full consideration, and with a strong desire to mark in some way their high appreciation of the merits of the officers engaged in this service, and of the probable consequences to the commercial interests of the country and to the cause of geographical knowledge, the committee are unable to recommend a grant of the prayer of the petition.

The duties of those engaged in this expedition have been faithfully and skilfully performed. The adverse conclusion which the committee have been forced to adopt, upon the question of allowing the compensation asked, rests upon general principles, and upon views of the impolicy of a system of extra compensation in particular cases, which have been more fully set forth in a report this day submitted upon the petition of officers connected with the recent expedition to the North Pacific ocean and Behring's straits. If the decision of the question on granting the allowance depended upon the merit, the skill, the fidelity, or the efficiency of those who ask, or even upon the importance and the probable results of the expedition in which they had been engaged, the committee would have no hesitation in recommending a grant of what is asked; but for the reasons set forth in the report above referred to, they believe that the interests of the service forbid a repetition of these extra allowances, and they are therefore compelled to recommend a denial of the petition.

The committee deem it proper to add, that the accounting officers of the department estimate that upwards of forty nine thousand dollars will be required to apply to those engaged in this expedition the principle of extra allowance which is asked. They recommend the adoption of the following resolution:

Resolved, That the prayer of the petition be denied.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1857.—Submitted, and ordered to be printed.

Mr. FISH made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Lieutenants J. M. Brooke, Thomas Scott Fillebrown, and J. H. Russell, of the United States navy, officers of the late exploring and surveying expedition to the North Pacific, China seas, and Behring's straits, report:

The petitioners allege that they were ordered to the expedition to do the duty of lieutenants; that these orders subjected them to the expenses of a grade higher than that of which they received the pay; that their expenses were increased by the character of the only ports at which they could obtain supplies for long voyages in unknown seas; that the number of officers upon whom the execution of the duties of the cruise were devolved was less than the allotted complement of a ship of war of the same class in the ordinary routine of cruising; and they therefore pray that they be granted the same pay and allowances that were granted to the officers of similar grades in the preceding exploring and surveying expedition commanded by Captain Wilkes.

The petition does not, in terms, ask the increased pay for any of the officers attached to the expedition, except the three petitioners; and the fact stated by them that they were ordered to do the duties of a grade higher than that of which they received the pay does not apply to all of the officers engaged. Nevertheless the prayer of the petition necessarily involves the policy and the propriety of making the allowance asked for to all who were attached to the expedition.

The petitioners have received their pay according to their respective grades as established by law. The policy of the government, with respect to the compensation of officers temporarily discharging the duties of a higher grade, is well settled, and has been frequently affirmed by Congress. The committee do not feel justified in recommending a departure from the established rule on this point, while they are not prepared to deny that the rule, which has been deliberately established by law, does occasionally operate hardly upon individual officers, or that it may have done so with regard to the petitioners; they believe that the general interests of the service require, in this respect, a rigid adherence to the established rule of law. If that rule be founded in error, it should be exchanged for another that will apply generally, and to all the officers of the navy. It should not be relaxed in individual cases. The efficiency and the moral ton

of the navy are injured by any encouragement held out to its officers to seek at the hands of Congress special legislation, whether of exemptions or of allowances, in individual or particular instances.

The rule for the assignment to duty of officers in the navy is intended, in the long run, to give to each an equal average of the pleasant, easy, and inexpensive duty, as well as of that which (like the service in which the petitioners were engaged) is arduous, exposed and expensive; and thus an adherence to a uniform rule of compensation works neither injustice nor hardship.

But the alleged assignment to the duties of a higher grade than that of which they received the pay, is not the principal ground upon which the request for extra compensation is rested. It is urged, in behalf of those engaged in this expedition, that its character was peculiar, and of a scientific nature; that it resembles in this respect the Wilkes expedition; and that it assimilates to the expeditions to Chile and the Amazon; that extra compensation was allowed to the officers engaged in those expeditions, and, *therefore*, should be allowed in this instance also.

The committee append to this report a letter from the Secretary of the Navy, showing the character and duration of service in this expedition.

They concur with the Secretary in his estimate of the fidelity and skill with which the duties were performed; and they entertain a confident hope that the results of the expedition will reflect credit and honor upon those engaged in it, and will promote the cause of science and advance geographical knowledge, and will inure to the benefit of the commercial interests of the country and of the world.

While according to those engaged in the expedition high commendation for their faithful and skillful discharge of important and arduous duties, the committee cannot recommend a grant of the prayer of the petition.

In arriving at this conclusion, they are not in any degree influenced by a consideration of the amount which a grant of the petition would involve. The Fourth Auditor states that "the officers and men of the Behring's straits expedition, if paid as those connected with the exploring expedition under Captain Wilkes were paid, would receive for extra compensation about \$57,000, engineers being excluded, of which class there were none on the latter (Wilkes) expedition."

The committee have not deemed it important to inquire how much, in addition to the \$57,000, would be required to pay the engineers.

They are of opinion that the precedent set by the extra allowance to the Wilkes' expedition, although followed by similar allowances in other cases, was erroneous; and that the consequences have been injurious, and ought to be arrested.

If it were a correct principle that officers are to be compensated, pecuniarily, in proportion to the value of their services, whether military or scientific, the committee would not hesitate to recommend an extra compensation to those engaged in the Behring's straits and North Pacific survey. But they deny the correctness of the principle; and, moreover, it might be difficult to measure, by the standard of money, the value and the ultimate results to science, to geographical knowl-

edge, and to the commercial interests of the expedition under consideration, and others of a similar character which have been conducted by our officers and men in other parts of the world.

It is the duty of the officers of our navy to perform the service to which they may be assigned to the best of their ability. Exposure, and peril, and hardship are incident to the profession which they voluntarily, if not anxiously, enter upon. And if they add to the world's state of science, or to their country's glory, their best reward is in the reputation which necessarily follows, and is proportioned to the contribution which they may have made. It has the advantage, too, of increasing, and of growing brighter as time and experience develop the value of such contribution.

The committee see no reason for granting these extra allowances, derived by analogy to the system of other nations, wherein extra compensation is *regularly* allowed for what is called surveying, or scientific employment. Every nation adopts its system, and adapts its rate of compensation according to its own policy. Where employment or promotion is an object of favoritism, it will naturally follow that different rates of compensation, within the same grade and rank, must be provided. Hence this system of additional pay on peculiar services in the navies of some other powers.

But our government has nicely determined to adopt a uniform rate of compensation for officers of the same grade. All who are qualified, and competent for any peculiar duty, in turn, have the opportunity, or are required to discharge such duty, whether it be one of labor, and peril, and hardship, or of ease, comfort, and honor.

Great Britain, whose system of increased compensation for what is called scientific service is principally cited as a reason for our adoption of a similar practice, has also a system of promotion, widely differing from our own. It may be nominally for merit or for distinguished service, and such, doubtless, is often the case; but it is equally true that favoritism is frequently the cause of promotion as well as of assignment to the duties to which increased compensation is attached.

The policy of this government has been to avoid the possibility of partiality in promotion of its naval officers by making it depend, as strictly as possible, upon seniority of rank.

The frequent instances which have occurred of allowing extra compensation for particular services, commencing with the Wilkes expedition, have almost grown into a system; so that every expedition, in a slight degree varying from the most common routine of the service, is brought before Congress for an extra allowance of pay.

The committee are deeply impressed with the necessity of arresting this tendency. They believe that it must lead to discredit the service in the public estimation; to substitute (in time) a spirit of greed instead of that spirit of patriotism and that love of glory and of fame which have hitherto characterized the officers of our navy, and that it will inevitably introduce the means and the opportunity of undue and improper partialities and favors into a service whose efficient existence depends upon their entire exclusion. They believe that among the bad but inevitable consequences resulting from the system which is growing up upon the precedent of the former extra allowances are to be found the dissatisfaction of those not participating in its bounties,

the institution of invidious comparisons and contrasts, the fostering of jealousies, and a tendency to exaggerate the hardships of the particular service in which each one is engaged.

The committee feel the less reluctance in the expression of these views and in the recommendation with which they will conclude their report, because of their high appreciation of the distinguished merit and exemplary conduct of the officers engaged in this expedition. If the system of extra compensation for peculiar services is to be continued, no more meritorious case than the present has occurred.

But the committee are unanimous in the opinion that the system is wrong and ought to be arrested. They therefore recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioners be denied.

NAVY DEPARTMENT,
August 1, 1856.

SIR: I have the honor to acknowledge the receipt of your communication of the 29th ult., enclosing a "memorial of the officers and men of the surveying and exploring expedition to the China seas and Behring's straits," and asking to be "informed of the character and duration of service in said expedition."

The expedition in which the memorialists were employed—consisting of the sloop Vincennes, brig Porpoise, schooner Fenimore Cooper, steamer John Hancock, and store-ship John P. Kennedy—was authorized by an act of Congress, approved August 31, 1852, and sailed from the United States for the contemplated purposes in June 1853. It reached the coast of China in the spring of 1854. Owing to the civil war then raging in China, the vessels of the expedition were employed in that neighborhood until September following for the protection of American interests when, with the exception of the John P. Kennedy, which was turned over to the East India squadron, they sailed from Hong Kong to the northward for surveying purposes. The Vincennes, Fenimore Cooper and John Hancock returning to Hong Kong in February, 1855—the Porpoise in the meantime having been lost—they sailed again in March on a survey to the North Pacific and Behring's straits. On their return home they arrived at San Francisco in October, 1855, where the Fenimore Cooper and John Hancock were put out of commission, some of the officers having been transferred to the Vincennes, and others ordered to the Atlantic States, *via* the Isthmus. The Vincennes arrived at New York July 13, 1856.

For a fuller statement of the progress and service of the expedition, you are respectfully referred to my annual official reports of 1853, 1854, and 1855.

The duties of the expedition have been faithfully and skillfully performed, and were of an exposed and trying nature. The memorial is herewith returned.

I am, very respectfully, your obedient servant,

Hon. S. R. MALLORY,

J. C. DOBBIN.

Ch. Com. Naval Affairs, U. S. Senate.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1857.—Submitted and ordered to be printed

Mr. DODGE made the following

REPORT.

The Committee on Commerce, to whom was referred the memorial of the city council of Burlington, Iowa, praying an appropriation for the construction of a building for the accommodation of the custom-house, United States court, and post office, report against the prayer of the memorialists, for the reasons set forth in the following letter of the Secretary of the Treasury, and ask that the report be printed:

TREASURY DEPARTMENT,
December 30, 1856.

SIR: I have had the honor to receive your letter of the 17th instant, enclosing a resolution of the Senate, which instructs the Committee on Commerce to inquire into the expediency of providing by law for the construction of a building at Burlington, in the State of Iowa, for the accommodation of the surveyor of the port, as a custom-house, for a post office, and for the use of the district court of the United States, which is held at that place; and on behalf of said committee, you ask me for such information and suggestions on the subject as may, in my opinion, be proper and conducive to the public interests.

In reply, I beg leave to state that Burlington was made a port of delivery by the act of August 31, 1852. Upon reference to the books of the Register of the Treasury, it appears that there is no tonnage at the port, nor exports or imports, and no duty collected, except on imports into other districts, where the articles are weighed, measured or gauged, and appraised, and the duties liquidated. The result of this course of business, as between Burlington and other places, is that there is no customs business left to be done at the former, except the storage and delivery of the goods upon receipt of the ascertained duties. But one officer, to wit: the surveyor, is consequently employed at Burlington, and no provision is necessary for an office.

It has not been the policy of Congress to construct buildings for the accommodation of post offices and the United States courts, except in combination with the custom-house officers. At this place there is no occasion for providing for officers of the customs, and no reason is perceived for providing, independently of them, for the other establishments mentioned.

The committee is aware that an appropriation was made by the act of August 4, 1854, for building a marine hospital at Burlington, for which a site has been purchased and arrangements made for commencing the work.

Under these circumstances, I do not feel at liberty to recommend an appropriation for a custom-house, &c., as proposed in the resolution of inquiry.

The resolution is returned.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

HON. HENRY DODGE,
Chairman Committee of Commerce U. S. Senate.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1857.—Submitted, and ordered to be printed.

Mr. DODGE made the following

REPORT.

The Committee on Commerce, to whom was referred the petition of citizens of Castine, praying the passage of a law for the construction of a new custom-house at that place, report against the prayer of the petitioners, for the reasons set forth in the following letter of the Secretary of the Treasury, and ask that the report be printed :

TREASURY DEPARTMENT,
January 31, 1857.

SIR: I have the honor to acknowledge the receipt of yours of the 28th instant, transmitting the petition of certain citizens of Castine, praying the passage of a law for the construction of a new custom-house at that place, which is herewith returned.

In reply to your request for such information and suggestions on the subject as I think proper, I have to say, that the revenue from customs at the port of Castine is but little more than half the expense of collecting it, although the force employed is but small. During the past four years the expenses of collecting have exceeded the revenue collected in the sum of \$7,368 24.

In view of these facts, the department does not deem that the public interest or the circumstances of the case demand an appropriation for a new building.

I have the honor to be, very respectfully, your obedient servant,
JAMES GUTHRIE,
Secretary of the Treasury.

HON. HENRY DODGE,
Chairman Committee on Commerce, Senate Chamber.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1857.—Submitted, and ordered to be printed.

Mr. DODGE made the following

REPORT.

The Committee on Commerce, to whom was referred the petition of the Board of Trade of Portland, Maine, praying the modification of the revenue laws, so as to have a revenue steam cutter on that coast, report against the prayer of the petitioners, for the reasons set forth in the following letter of the Secretary of the Treasury, and ask that the report be printed :

TREASURY DEPARTMENT, *July 21, 1856.*

SIR: I have duly considered the memorial of the Board of Trade of the city of Portland, which, at the instance of the Committee on Commerce, you placed some days since in my hands, praying that provision may be made for a steam revenue cutter in that district. It is proposed by the memorialists that the cutter to be provided shall not cost more than one hundred thousand dollars, and shall cruise between Portsmouth and Mount Desert, a distance of one hundred and fifty miles of coast, for the purpose of relieving vessels approaching it in distress.

Similar applications have been made, and, I believe, are now before Congress, for steam cutters to be stationed at New York and at San Francisco, and with the like view of affording relief to vessels approaching in distress.

Upon the subject of these applications, I beg leave to say that the two objects of protecting the revenue on the one hand, and affording relief to vessels on the other, cannot, as experience has shown, be advantageously combined, and the service required be performed by one and the same vessel.

The idea of affording relief to commerce in the manner proposed originated in 1837. In that year an act was passed "authorizing the President to cause any suitable number of public vessels, adapted to the purpose, to cruise upon the coast in the severe portion of the season, when the public service will allow of it, and to afford such relief to distressed navigators as their circumstances and necessities may require." The duty therein enjoined was unfortunately devolved upon the revenue cutters, and by leading to the gradual introduction into the service of a larger class of cutters and an increased comple-

ment of men, has, besides very much increasing the expense, rendered them less fit and less able to perform their proper duties in the protection of the revenue. Vessels drawing more than five or six feet water, and of a burden over about ninety tons, are unable to enter the rivers, creeks, and bayous where smuggling is to be apprehended, and are therefore unfit for revenue cutters. On the other hand, vessels of this draught and burden are wholly inadequate to afford relief; and, besides, whilst cruising for the purpose of relief, would be off the ground where the greatest danger to the revenue is involved. So far, therefore, from concurring in the proposition to employ larger vessels, to be propelled by steam as revenue cutters, in order to being employed to furnish relief on the coasts of their respective districts, I am obliged, from the experience before me, to express my conviction of its inexpediency; and further, that the effort to unite the incompatible duties in question should be wholly abandoned.

Should Congress, as a distinct measure, determine to give aid to vessels approaching the coast in seasons of danger, a very considerable sum would be required, and a very large outlay would be involved. Provision must be made not only for Portland and the limits of coast contained in the memorial, but for Boston, New London, New York, Philadelphia, Baltimore, Norfolk, Savannah, Charleston, Mobile, New Orleans, and Galveston, &c., as well as for the Pacific coast. Nor would one steam-vessel be sufficient for each of the said districts, and the coast lying upon them. The service being provided, it would be expected of the government to make it effective, and two, and in some instances, three or four vessels would be found necessary. The probability is, that a fleet of eight or ten vessels would be required for the Pacific coast alone.

It is doubtless true that the nation is abundantly able to defray all the expense of such vessels, as of any just object of national policy; but the expense to be anticipated is, at least, sufficiently large to make that expense a proper subject of consideration, and whether the end in view cannot be accomplished in a different mode and without any or at a much less expense.

It is not improbable that the public vessels of the navy were in view of Congress in passing the act of 1837, as much or more than the public vessels employed for the protection of the revenue. In time of peace no inconvenience could arise from assigning the smaller vessels of the navy to this service. Their size would adapt them to it, and the duty would furnish a salutary employment and school of practice and improvement for its officers.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. H. HAMLIN,
Chairman Committee of Commerce, U. S. Senate.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 12, 1857.—Ordered to be printed.

Mr. JONES, of Tennessee, made the following

REPORT.

[To accompany bill S. 587.]

The Committee on Military Affairs, to whom was referred the message of the President of the United States, communicating the act of the legislature of Tennessee, respecting the purchase of the "Hermitage," for the purpose of tendering it to the government of the United States to be used as a site for a branch of the Military Academy at West Point, having had the same under consideration, report :

The President communicates to the Senate the letter of the governor of the State of Tennessee, dated Nashville, December 18, 1856, covering a copy of the act of the legislature of the State passed February 11, 1856, in which the legislature tenders to the government five hundred acres of land of the late residence of ex-President Jackson, deceased, including the mansion, tomb, and other improvements, known as the "Hermitage," upon the condition that it be used by the government as a site for a branch of the Military Academy at West Point.

The State of Tennessee, with patriotic liberality, purchased from its late proprietor, at a cost of \$48,000, "five hundred acres" of the homestead of the late General Jackson, with the view of tendering the same to the United States upon the terms and conditions mentioned in said act, provided the same be accepted within two years from the expiration of the session of the legislature at which the act was passed. So that it only remains for Congress to accept this munificent offer of the State within the time specified, or to refuse to second the effort of that State to establish within its limits a branch of an institution which has long served to furnish to our army many of its best officers—to our country, some of its brightest ornaments.

The United States Military Academy at West Point was established by act of Congress in 1802; and as then constituted, with but little increase in its accommodations, or in the number of its officers or professors, has continued for fifty-five years, under the fostering care of the government, to supply to our army young officers well skilled in such branches of military education as render them efficient for the

discharge of such duties as necessarily devolve upon them under their commissions.

All who admit the necessity which suggested the establishment of West Point Academy more than half a century ago, with our infant army and limited territory, must readily acknowledge that our army, now spread over thousands of miles, and our almost unlimited territory, loudly call for a commensurate increase in that institution, by establishing branches of it in other sections of the country.

West Point has long since ceased to be an experiment; it now numbers among its alumni some of our most distinguished statesmen, civilians, army officers, and cabinet ministers; and the success of our arms in the several wars in which we have been engaged has been owing, in a great degree, to the superior skill of our engineers, to whose plans of campaign may be attributed the brilliant victories which have ever perched upon our banners. The legislature of Tennessee, aware of the great advantages of this institution to the country, desire to extend its usefulness by locating a branch of it within their State, and, with that view, propose to donate to the United States that beautiful spot, the late residence of the distinguished ex-President Jackson, embracing within its five hundred acres his mansion, tomb, &c.—a place remarkable not only for the beauty and delightfulness of its situation, but also admirable for its salubrity and its unexampled adaptation for the purposes for which it is now proffered to the government.

The State of Tennessee, filled with admiration of and veneration for the character of the hero who rendered such important services to his country in the time of danger as did the immortal Jackson, desire to perpetuate his name upon the spot where he lived, and where his remains now rest, by erecting over the ashes of that wonderful man a monument of which not only Tennessee may be justly proud, but which the world may admire.

The committee, therefore, highly appreciating the motives which prompted the State of Tennessee to make this liberal tender to the government, and believing that the best interests of the country require that a branch of the Military Academy at West Point should be established at the "Hermitage," report a bill authorizing the President to accept the donation upon the terms and conditions proposed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 13, 1857.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany bill S. 589.]

The Committee of Claims, to whom was referred the report of the Court of Claims in the case of John Ericsson, report :

This claim is for the services of Captain Ericsson in planning and superintending the construction of the steamer "Princeton" and its machinery.

The court is unanimous in opinion that the sum of thirteen thousand nine hundred and thirty dollars is due to Captain Ericsson, for the payment of which they resubmit a bill, in which the committee concur. The opinion of the court is hereto annexed.

IN THE COURT OF CLAIMS.

JOHN ERICSSON vs. THE UNITED STATES.

The opinion of the court was delivered by SCARBURGH, J.

By an act of Congress approved March 3, 1839, it was made "the duty of the Secretary of the Navy, under the direction of the President, to make preparations for, and to commence, the construction of three steam vessels of war, on such models as shall be most approved, according to the best advices they can obtain, or to complete the construction of one such vessel of war, upon a model so approved as, in the opinion of the President, shall be best for the public interest, and most conformable to the demands of the public service;" and to enable the department to carry into effect this requirement, an appropriation of three hundred thousand dollars, subject to certain restrictions, was made.—(5 Stat. at Large, ch. 95, § 2, p. 364.)

By an act of Congress approved July 20, A. D. 1840, a similar appropriation of the further sum of three hundred and forty thousand dollars was made, for the purpose of completing the two steam vessels which had been commenced.

By an act of Congress approved March 3, A. D. 1841, an appro-

priation of the further sum of four hundred thousand dollars was made, to be expended in building and equipping war steamers of medium size.

On the 11th day of September, A. D. 1841, the Secretary of the Navy, by a letter of that date, addressed to the president of the navy board, directed the board of navy commissioners to cause to be built two steam vessels of war—one on Captain Stockton's plan, not exceeding six hundred tons; and one on that of Lieutenant Hunter, not to exceed three hundred tons. Afterwards the acting Secretary of the Navy, by a letter dated the 22d day of September, A. D. 1841, addressed to Captain R. F. Stockton, United States navy, informed him of the direction which had been given to the board of navy commissioners, and ordered him to superintend the building of the steamer of six hundred tons, under the direction of the commandant of the navy yard at Philadelphia, making to him, from time to time, during the progress of the work, such suggestions as he (Captain Stockton) might think proper.

Captain Stockton, in a letter addressed by him to the petitioner, dated October 2, A. D. 1841, expressed a wish to see and converse with him on the subject of the construction of the steamship, the building of which he had received orders to superintend. An interview took place between them, and Captain Stockton, in a letter to the petitioner, dated the 8th day of October, A. D. 1841, requested the petitioner to make the drawings of a ship with the dimensions they had previously spoken of. In subsequent letters, marked in the printed document ("Exhibit A") on file in this case, "No. 16," "No. 17," "No. 18," and "No. 19," Captain Stockton gave the petitioner further and more particular instructions in regard to the drawings which he desired him to make. The petitioner complied with the request of Captain Stockton in all respects, and, in conformity thereto, made the drawings and performed the services specified in "Schedule A," to be found in the printed document above mentioned.

The ship Princeton was constructed according to these drawings, and the result was entirely satisfactory to Captain Stockton, and highly advantageous to the United States. Captain Stockton reported her to the Secretary of the Navy as "a 'full rigged ship' of great speed and power, able to perform any service that can be expected from a ship of war."—(See "Schedule M" of "Exhibit A.")

On the 14th day of March, A. D. 1844, the petitioner presented his claim ("Schedule A" of "Exhibit A") for compensation for his services to the Secretary of the Navy; and on the 11th day of May, A. D. 1844, it was rejected, on the ground that Captain Stockton, in a letter to the Secretary of the Navy, had stated as follows: "In regard to Captain Ericsson's bill, which was sent to me at the same time, I must say that, with all my desire to serve him, I cannot approve his bill; it is in direct violation of our agreement as far as it is to be considered a legal claim upon the department."—(See "Schedule F" of "Exhibit A.")

In a subsequent letter from Captain Stockton to the Secretary of the Navy, he further stated: "That it has given me great pleasure to

acknowledge, upon all proper occasions, the services of Captain Ericsson's mechanical skill in carrying out my well intended efforts for the benefit of the country." * * * * "I have invariably given him to understand, in the most distinct manner, whenever the subject was alluded to, that I had no authority from the government to employ him; and that if he received anything, that it must be altogether gratuitous on the part of the government; that, considering the great opportunity that he, as an inventor, would have to introduce his patent to the world by the aid of the funds of the government, I did not think it proper for him to make a charge for their application to the Princeton; in all of which he has concurred, as far as I know, up to the time of the presentment of his extraordinary bill."—(See "BB" of "Exhibit A.")

In a letter from Captain Stockton to the petitioner, written in July, A. D. 1841, he says: "In making up the estimate for the cost of the ship, it will be necessary to consider what must be put down for the use of your patent right. It will be necessary, therefore, for you to write me a letter stating your views on that subject. As a great effort has been made to get a ship built for the experiment, I think you had better say to me in your letter that your charge will hereafter be (if the experiment should prove successful) —; but, as this is the first trial on so large a scale, I am at liberty to use the patents, and after the ship is tried, government may pay for their use in that ship whatever sum they may deem proper." In reply to this letter, the petitioner, in a letter to Captain Stockton, dated the 28th day of July, A. D. 1841, said: "I have duly received your communication on the subject of my patent right for the ship propeller and semi-cylindrical steam-engine; in reply to which I beg to propose, that, in case these inventions should be applied to your intended steam frigate, all considerations relating to my charge for patent right be *deferred* until after the completion and trial of the said patent propeller and steam machinery. Should their success be such as to induce government to continue the use of the patents for the navy, I submit that I am entitled to some remuneration; but, considering the liberality that thus enables me to have the utility of the patents tested on a very large scale, and the advantages which cannot fail to be derived in consequence, I beg to state, that whenever the efficiency of the intended machinery of your steam frigate shall have been duly tested, I shall be satisfied with whatever sum you may please to recommend, or the government see fit to pay for the patent right."—(See "No. 12" and "No. 13" of "Exhibit A.")

In a letter from Captain Stockton to the Secretary of the Navy, dated February 7, A. D. 1853, he refers to his letter of May 20, A. D. 1844, and, amongst other things, says: "In that letter I stated the nature of Captain Ericsson's services and the extent of the department's obligation to him, and admitted his claim to such compensation from the government as, under the circumstances, he may be entitled to.

"Time and reflection have not diminished, but rather increased, my estimate of the nature of Captain Ericsson's services, and I have now the honor to reiterate my former opinion, and further to say, that the

government should make him a fair and reasonable compensation for his time and expenses while engaged in superintending the construction of the Princeton's machinery, &c., &c."

The services rendered by the petitioner were reasonably worth the amount charged by him, to wit: the sum of fifteen thousand and eighty dollars.—(See the deposition of Charles W. Copeland.)

The question now presented for our consideration is, whether, under these circumstances, the petitioner is entitled to relief. He has shown that it had been determined by the proper authority, in pursuance of law, to build the steamer Princeton, and that to effect that object on the plan proposed, and on which she was in fact constructed, the very services rendered by the petitioner, to be performed either by him or some other person, were indispensable. It is insisted, however, that the services of the petitioner were rendered gratuitously. If this be true, then the petitioner's claim cannot be sustained.

In support of the proposition that the petitioner's services were rendered gratuitously, it is urged, first, that he was not employed by any person duly authorized to employ him; and, second, that the testimony of Captain Stockton is direct and positive that they were thus rendered. *Nemo presumitur donare*, and this maxim applies with great force to a case like the present, where the object on which the bounty is to be bestowed is a great and powerful government, in possession of abundant means for all its legitimate purposes.

That the determination to build the steamer Princeton, precisely on the plan on which she was built, was made by the proper authority, under an adequate appropriation, is not disputed, and is, in fact, indisputable. It is equally clear that it was not expected that her construction could be effected without an outlay of money. In order to carry out the object contemplated, it was necessary to employ proper agents, and to invest them with the authority requisite for the purpose. Accordingly we find the Secretary of the Navy giving orders to Captain Stockton to superintend the building of the steamer under the direction of the commandant of the navy yard at Philadelphia, and to make to him, from time to time, during the progress of the work, such suggestions as he might think proper. If, then, this order was obeyed, she was lawfully built, and everything done in connexion with her construction was lawfully done.

That the petitioner rendered the services for which he claims compensation is undisputed; but it is insisted that Captain Stockton had no authority to make such a request so as to entitle the petitioner to compensation, except under the direction of the commandant of the navy yard at Philadelphia. If this be true, and Captain Stockton made the request without the direction of the commandant of the navy yard at Philadelphia, he was guilty of a violation of duty. And, moreover, if this direction was essential to the validity of such a request, then it was also essential to authorize Captain Stockton to accept the services of the petitioner, though tendered to him gratuitously. But it is to be presumed that Captain Stockton, in all that he did, acted in the line of his duty, and not in violation of it. No complaint has ever been made against him by the government, whose agent he was, but, on the contrary, the payment of the petitioner's

claim was made by the very authority under which Captain Stockton acted to depend upon his report. It must be intended, therefore, that, in making the request on which the petitioner's services were rendered, he acted by proper authority. If the direction of the commandant of the navy yard at Philadelphia were necessary, it will be presumed. The Secretary of the Navy himself, in rejecting the petitioner's claim, recognised Captain Stockton as the trusted and duly authorized agent of the government in the premises. There is, then, no room for question that what the petitioner did was lawfully done, and that his services were rendered at the request of an officer duly authorized to make it. He did not officiously intermeddle with the great public work which was going on. It would, indeed, be a most offensive imputation upon the characters of the honorable men under whose superintendence and direction it was carried on and completed, even to suppose that he could have done so if he had desired. The only point of inquiry, therefore, is, did the petitioner render his services gratuitously?

The letter from Captain Stockton to the Secretary of the Navy, of the 20th May, A. D. 1844, is explained by his letter to the same officer, of the 7th February, A. D. 1853. If we take the former according to its strict literal interpretation, Captain Stockton may be understood not only as having denied that he had any authority to employ the petitioner, but also as having asserted that the petitioner volunteered his services, and rendered them gratuitously. But he did not mean either the one or the other, as is apparent from the consideration that if he did, the two letters would be in conflict with each other. In his letter of the 7th February, A. D. 1853, he expressly says, that in his letter of the 20th May, A. D. 1844, he stated "the nature of Captain Ericsson's services, and the extent of the department's obligation to him, and admitted his claim to such compensation from the government as, under the circumstances, he may be entitled to." He meant, therefore, in his letter of the 20th May, A. D. 1844, not only to state an obligation of some kind on the part of the Navy Department to the petitioner, but also to state the extent of that obligation, by admitting that he is entitled to a reasonable compensation for his services. But this is wholly inconsistent with the idea that those services were rendered gratuitously. The first letter, therefore, is not to be literally interpreted. It may not be improper here to add, that the letter of the 7th February, A. D. 1853, was obviously designed to be explanatory of the former letter; and to remove all doubt as to his meaning, he, in conclusion, says: "Time and reflection have not diminished, but rather increased, my estimate of Captain Ericsson's services; and I have now the honor to reiterate my former opinion, and further to say, that the government should make him a fair and reasonable compensation for his time and expenses, while engaged in superintending the construction of the Princeton's machinery, &c., &c."

With the first letter thus explained, the whole case is relieved from difficulty. If the Secretary of the Navy, when he received that letter, had understood it according to this explanation, he would not have rejected the petitioner's claim. When Captain Stockton wrote the

letter of the 20th May, A. D. 1844, he was manifestly under an impression that the plaintiff was asserting a special contract for specified services at fixed prices; and he meant to state not only that no *such* contract had been made, but that he had no authority to make it. It is to such a contract that the whole of the first letter refers. We can very well understand that the petitioner would gladly have availed himself of such an opportunity "to exhibit to the world the importance of his various patents," and that to secure it, he would have permitted his compensation to depend on the contingency of their success; but we do not suppose that Captain Stockton or any one else desired, that, if the result should be entirely successful, the United States should receive the benefit of the petitioner's services without compensation. Taking the two letters of Captain Stockton together, we have no difficulty in coming to the conclusion, that the understanding between the petitioner and Captain Stockton was, that the petitioner should be permitted "to exhibit to the world the importance of his various patents" in his own way and according to his own plans, and that he should receive just such compensation for his services as should be justified by the result. The petitioner agreed to accept a *quantum meruit*, dependent on the success of his labors.

The petitioner admits the receipt of eleven hundred and fifty dollars. He claims fifteen thousand and eighty dollars. We shall report to Congress a bill in his favor for the sum of thirteen thousand nine hundred and thirty dollars.

A BILL for the relief of John Ericsson.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he hereby is, directed, out of any money in the treasury not otherwise appropriated, to pay to John Ericsson the sum of thirteen thousand nine hundred and thirty dollars, in full for the balance due him for his services in planning the United States war steamer Princeton, and planning and superintending the construction of the machinery of the said steamer.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 13, 1857.—Ordered to be printed.

Mr. WADE made the following

REPORT.

[To accompany bill S. 590.]

The Committee of Claims, to whom was referred the memorial of James Maccaboy, report:

The memorialist was in the employ of the United States as a fireman on board a steam-dredge at the Washington navy yard. While in the discharge of his duty, and, as it appears, without any fault on his part, he met with a casualty which resulted in the necessary amputation of one of his legs near the body. The accident occurred on the 13th day of August, 1855.

Commodore Forrest, commandant of the yard, says:

"I should be pleased if the memorialist, who has been a faithful public servant, and *who lost a leg in the performance of his duty*, could be placed on the pension roll for the remainder of his life. He is pretty well advanced in life, and cannot be expected to live many years longer."

The other officers of the yard concur in the same views.

While the committee would not recommend any departure from the established policy of the government, which limits the allowance of pensions to cases arising in the military or naval service, yet they believe cases may occur where a volunteer or laborer or mechanic may be as justly entitled to the bounty of his government for injuries received in its service as if such person had been regularly enlisted in the army or navy.

Where a skilful and industrious mechanic or laborer is employed by the government in a *necessary but dangerous service*, and, without any fault or negligence, receives, in the performance of his duty, an injury which permanently disables him from providing for those dependent upon his skill and labor for support, it would alike become the government or an individual employer to manifest their sympathy "in the only way calculated to carry conviction of its sincerity," by extending some measure of material aid and bounty. Such a case, it is believed, is presented by the petitioner.

As all cases of this character must necessarily come before Congress, and be passed or rejected upon their own intrinsic and individual

merits, as appealing directly to the bounty and making no pretension to the legal obligations of the government, it is not regarded as belonging to that class of cases from which injurious precedents are likely to be drawn. These views are sustained by the action of Congress in 1847, in the case of James Jones, who received a severe injury while in the employment of the government as a rigger, although not enrolled or enlisted, it being regarded as one of those meritorious cases in which the government might and ought to interpose its bounty to save from poverty and want one who was made helpless while in their service.

Senate reports, 32d Congress, 1st session, No. 81 and No. 208, and 34th Congress, 1st session, No. 37 and No. 79, and report of House of Representatives, 31st Congress, 1st session, No. 289, recognize the same principles.

In conformity with these views, the committee report the accompanying bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 13, 1857—Ordered to be printed.

Mr. GREEN made the following

REPORT.

[To accompany bill S. 591.]

The Committee on Pensions, to whom was referred the resolution of the Senate inquiring into the expediency of granting a pension to William W. Spencer, have had the same under consideration, and submit the following report :

That it appears of record that William W. Spencer was a private in company D, Mormon battalion, of Missouri volunteers, commanded by Colonel Cook, in the late war with Mexico ; that he enlisted as a private, on July 16, 1846, at Council Bluffs, Iowa, and served under General Kearny until 8th November, 1848, when he was discharged, on account of half disability, incurred in the service, while in the line of his duty, by falling from his mule, which fully appears by the certificate of George B. Sanderson, late assistant surgeon, United States army. The Department of the Interior placed petitioner on the pension roll, 19th October, 1852, at half pay for a private. He claims pay as steward, in which capacity he seems to have acted, at a higher rate than is allowed to privates in the United States service. Your committee are officially informed that there is no distinction known in the army between the pay of steward and private. After consulting with the Pension Bureau, they consider that petitioner should be paid according to the grade of half disability, from the date of his discharge, 8th November, 1848, until 19th October, 1852, inclusive, and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 13, 1857.—Submitted, and ordered to be printed.

MR. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of George Colvin, praying Congress to grant him a pension for injuries received in the military service of the United States, have had the same under consideration, and submit the following report:

The petitioner alleges that he was a soldier in the Indian war of 1794 and 1795, and served in the States of Ohio and Kentucky; and that he was wounded while in said service, and in the line of his duty, by a party of Indians, at or near a place called Hanging Rock, on the banks of the Ohio river. There is no evidence on file in the War Department that petitioner ever served a day as a regular soldier. The proofs adduced by the claimant only show that he was engaged with a party of men in carrying the mail on a boat from Maysville, Kentucky, to Gallipolis, in Ohio. It has not been the practice of this government to grant pensions for services other than military. Therefore, your committee recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner be denied.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 13, 1857.—Submitted, and ordered to be printed.

Mr. GREEN made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of John Rooney, praying for an increase of pension, beg leave to report:

That they have had the matter under consideration, and find the circumstances of this case to be these, as appear by the records upon which he obtained an invalid pension: That he was discharged on a surgeon's certificate at New Orleans May 1, 1848, by reason of the loss of his right arm by a grape-shot at the battle of Cerro Gordo on the 17th of April, 1847; he was pensioned at eight dollars per month, the highest monthly rate allowed by law to one of his grade, to take effect at the date of his discharge. He now asks that his stipend be increased to sixteen dollars per month. The loss of his right arm might be evidence of an equitable claim upon the part of the petitioner, yet in the absence of a change in the general law this case cannot be distinguished from others perhaps equally meritorious.

Your committee therefore report and recommend the adoption of the following resolution, to wit:

Resolved, That the prayer of the petitioner be denied.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1857.—Ordered to be printed.

MR. BENJAMIN made the following

REPORT.

[To accompany bill S. 592.]

The Committee on Private Land Claims, to whom was referred the "petition of the administrator of John F. Wray, deceased, praying that the money paid for certain lands purchased of the United States, his title to which has been declared null and void by the courts of the State of Mississippi, may be refunded," have had the same under consideration, and submit the following report:

Under the 6th article of the treaty with the Chickasaw nation of Indians of the 24th of May, 1834, the conditions therein having been complied with, a reservation of one section of land was made to a Chickasaw Indian by the name of Ho-ya-po-nubby, by the proper register and receiver of the land office. This location was made upon section 16, township 9, of range 5 east, on the 29th day of June, 1838.

That subsequent to such location the proper department refused to approve and confirm such location, and the said section, No. 16, together with other lands, was in May, 1844, offered for sale as public lands, under a proclamation of the President of the United States. That under such proclamation, the said John F. Wray, in his life time, entered the northwest quarter, the southeast quarter, and the southwest quarter of said section 16, for the sum of six hundred and two dollars and nineteen cents, and took possession thereof. In September, 1845, an action of ejectment was commenced against said Wray, in the circuit court of Pontitoc county, by the said Ho-ya-po-nubby, and the title was decided to be in the said Indian. Upon an appeal taken by the said Wray to the high court of errors and appeals, the decision of the said court was affirmed, and the said Wray was evicted of his title.

Upon application to the Commissioner of the General Land Office for a return of the purchase money under the act of 1825, it was decided that there was no authority under the law to return the purchase money. The money went into the treasury for the benefit of the Chickasaw fund.

The said Wray has since died, and the petitioner, Jefferson Wilson, was appointed administrator of the estate of said Wray.

The money having gone into the treasury of the United States, and Wray defeated in his title to the lands purchased, the government is legally bound to return the purchase money.

The committee, therefore, report a bill for that purpose, with a recommendation that the same do pass.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1857.—Ordered to be printed.

Mr. WADE made the following

REPORT.

[To accompany bill S. 594.]

The Committee of Claims, to whom was referred the memorial of John R. Nourse, report :

It appears that in 1832 the memorialist became one of the sureties upon the official bond of Wm. P. Zantzinger, a purser in the United States navy ; that Zantzinger was not ordered to sea until 1837 ; that previous to his leaving the United States, a rumor got into circulation that he was in arrears to the government, and the memorialist, becoming alarmed, protested to the department against his being intrusted with more money at his risk, and asked that Zantzinger be required to give new bonds. In answer to this request, he received the following letter from the Secretary of the Navy :

“ NAVY DEPARTMENT, *August 13, 1837.*

“ SIR : Agreeably to your request, I have notified Purser Zantzinger of your desire that he should substitute another person for yourself as surety on his bond.

“ I am, respectfully, yours,

“ M. DICKERSON.

“ JOHN R. NOURSE, Esq.,

“ *Washington, D. C.*”

Zantzinger was, however, sent to sea without his bond having been renewed.

In March, 1843, Purser Zantzinger renewed his bond, of which Mr. Nourse was duly informed. Soon after this suit, was brought upon the old bond, and a judgment rendered against the principal and sureties for \$8,000. A portion of this has been liquidated.

The memorialist regards it as a great hardship that his property should be sacrificed for a default which occurred subsequently to his protest against being held for further liability on a bond executed five years before and under different circumstances.

It is now nearly a quarter of a century since the bond was executed, and the committee think that, under the circumstances of the case, it would be a hardship upon the memorialist to enforce the execution against him; and they report a bill for his relief, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1857.—Ordered to be printed.

Mr. THOMSON, of New Jersey, made the following

REPORT.

[To accompany bill S. 598.]

The Committee on Pensions, to whom was recommitted the petition of Mrs. Emma A. Wood, praying Congress to grant her a pension, beg leave to report :

That the petitioner sets forth that her husband, Brevet Major George W. F. Wood, late of the United States army, was a cadet, and entered the army at the age of nineteen years, in 1838, and died at Indianola, Texas, November 8, 1854, while engaged in the military service of the United States ; that he served in the Florida war until its close ; was stationed at different northern posts until the spring of 1846, when he went to Mexico ; was in the battle at Monterey, afterwards joined General Scott's division, and was engaged in the "army of invasion" under that officer, during the war, after which he returned to New Orleans, bringing up the rear guard ; that in consequence of having contracted in Mexico a disease known as "chronic diarrhoea," while in the line of his duty, he was confined for several months in New Orleans, and that he never recovered, nor was entirely free from said disease. He was appointed assistant quartermaster March 3, 1847 ; and subsequent to his sickness at New Orleans, he was on duty at Jefferson barracks until 1849, when he was ordered to accompany the troops stationed on the Oregon route ; he remained at Fort Kearny until 1851, when he was ordered to the principal depot, in advance of Fort Washita, west of Arkansas, on upper Red river ; he arrived at Preston in October, 1851, and remained until the fall of 1852. He was then ordered to Austin, Texas, where he remained until the spring of 1854, when he was ordered to Indianola, Texas, to take charge of the depot at that point in April, 1854, where he continued on duty until his death in November of that year. The following extracts from an official statement of Colonel Charles Thomas, assistant quartermaster general United States army, now of the War Department, dated January 10, 1857, which is now before this committee, after corroborating the above statement of petitioner, says : "It would seem from the above brief statement that the deceased returned from Mexico after the close of the war, and continued on duty without

a leave of absence for upwards of six years ; that he served with distinction in Mexico is well established, having been breveted a major, (date August 20, 1847,) for gallant and meritorious conduct in the battles of Contreras and Cherubusco." "At the last three stations where he was on duty, Preston, Austin and Indianola, Texas, there being no troops, he was unable to avail himself of the advice of army surgeons, except as they may have occasionally passed those posts, and at Indianola, where he died, I doubt whether he had even a casual opportunity of consulting one. The immediate cause of his death was reported 'yellow fever,' and I think it probable the disease proved fatal from his previous state of health."

Doctor J. H. Baldwin, of Indianola, testifies, under oath, that he attended the late Major George W. F. Wood in his last illness as his physician ; that he died of yellow fever ; and, in his "opinion, the fatal termination of his disease was occasioned by chronic diarrhoea, under which he had labored for a long time, and which, he informed me previous to his death, was contracted while on duty in Mexico during the late war with that republic." Surgeon S. T. Moore, of West Point, certifies that he "consulted with Quartermaster Major George W. F. Wood, at St. Louis, Missouri, in the winter of 1848 and '49, on account of a chronic dysentery contracted by him during his period of service with the army in Mexico, and from which attack of dysentery he had never entirely recovered. He was under treatment for sometime, with little or no benefit. Chronic dysentery is difficult of cure, and induces a very precarious condition. A patient suffering from this disease, going to a hot and unhealthy climate, is liable to a return of his disease ; and if any disease is contracted, the chances of cure is greatly diminished ; and this was the condition of the late Major Wood, who died at Indianola, Texas."

After a careful investigation of the evidence presented by petitioner, your committee are of the opinion that the application of Mrs. Emma A. Wood for a pension is one that deserves the favorable consideration of Congress, and report the accompanying bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 16, 1857.—Submitted and ordered to be printed.

Mr. MALLORY made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of A. S. Taylor, an officer on board the United States steamer Missouri at the time it was destroyed by fire, praying indemnification for losses sustained thereby, have had the same under consideration, and report:

The petition is as follows :

“The undersigned respectfully requests, as one of the officers of the late United States steamer ‘Missouri,’ destroyed by fire in the harbor of Gibraltar in July, 1843, to be remunerated for his losses on that occasion. He did not save an article of his clothing and effects but what he stood in at the time.

“The United States steam-frigate ‘Missouri,’ lying in the harbor of Gibraltar, in July, 1843, accidentally caught fire and was consumed.”

Congress appropriated a sum of money to indemnify the seamen comprising the crew of the ship for their clothing and effects, which, with those of the officers, were all lost, but no relief was granted to the commissioned officers.

Your committee are not apprised of the reasons which dictated this distinction, but they presume that it arose from an extended and rational view of the subject.

The Missouri was a ship of the first class, and constituted an important part of our small naval force, and she was burned, not in action, not in the performance of any duty, but while lying securely at anchor in the port of our great commercial and marine rival. The policy of indemnifying officers for losses whose gallantry or conduct renders a ship victorious in action or saves her from some great and impending peril, can readily be recognized ; but your committee can see no propriety for establishing the precedent of indemnifying officers for losses incurred by the destruction of their vessel under the circumstances of the Missouri's loss. They therefore recommend that the prayer of the memorialist be rejected.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1857.—Submitted, and ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

The special committee appointed to take into consideration the expediency of amending the 34th rule of the Senate, relating to committees, report as follows:

Amend rule 34 as follows:

Rule 34. The following standing committees shall be appointed at the commencement of each session, with leave to report by bill or otherwise:

A Committee on Foreign Relations, to consist of seven members.

A Committee on Finance, to consist of seven members.

A Committee on Commerce, to consist of seven members.

A Committee on Military Affairs and the Militia, to consist of five members.

A Committee on Naval Affairs, to consist of five members.

A Committee on the Judiciary, to consist of seven members.

A Committee on Post Offices and Post Roads, to consist of seven members.

A Committee on Public Lands, to consist of seven members.

A Committee on Private Land Claims, to consist of five members.

A Committee on Indian Affairs, to consist of seven members.

A Committee on Pensions and Revolutionary Claims, to consist of five members.

A Committee on Claims, to consist of five members.

A Committee on the District of Columbia, to consist of seven members.

A Committee on Patents and the Patent Office, to consist of five members.

A Committee on Public Buildings and Grounds, to consist of five members, who shall have power also to act jointly with the same committee of the House of Representatives.

A Committee on Territories, to consist of seven members.

A Committee on the Library, to consist of five members.

A Committee to Audit and Control the Contingent Expenses of the Senate, to consist of five members, to whom shall be referred all resolutions directing the payment of money out of the contingent fund of the Senate, or creating a charge on the same.

A Committee on Printing, to consist of three members, to whom shall be referred every question on the printing of documents, reports, or other matter transmitted by either of the executive departments, and all memorials, petitions, accompanying documents, together with all other matter, the printing of which shall be moved, excepting bills originating in Congress, resolutions offered by any Senator, communications from the legislatures, or conventions lawfully called of the respective States, and motions to print by order of the standing committees of the Senate; motions to print additional numbers shall likewise be referred to said committee; and when the report shall be in favor of printing additional numbers, it shall be accompanied by an estimate of the probable cost; and it shall be the duty of such Committee on Printing to report, in every case, in one day, or sooner if practicable; the said committee shall also supervise and direct the procuring of maps and drawings accompanying documents ordered to be printed.

A Committee on Engrossed Bills, to consist of three members, whose duty it shall be to examine all bills, amendments, resolutions, or motions, before they go out of the possession of the Senate; and shall deliver the same to the Secretary of the Senate, who shall enter upon the journal that the same have been correctly engrossed.

A Committee on Enrolled Bills, to consist of three members.

Each of the foregoing committees shall be entitled to employ a clerk, with the exception of the six following, which shall not be entitled to a clerk, viz:

1. The Committee on Patents and the Patent Office.
2. The Committee on Public Buildings and Grounds.
3. The Committee to Audit and Control the Contingent Expenses of the Senate.
4. The Committee on the Library.
5. The Committee on Engrossed Bills.
6. The Committee on Enrolled Bills.

The clerks of the Committees on Finance, Printing, and Claims, shall be permanent clerks, at a salary of eighteen hundred and sixty dollars per annum.

The clerks employed by all the other committees shall receive a compensation of six dollars *per diem* during the time of their actual employment; and at the close of the second session of each Congress shall be entitled to an extra compensation equal to the amount of their *per diem* for sixty days.

Resolved, That the foregoing be substituted for the 34th rule of the Senate, to take effect from and after the expiration of the present session of Congress.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1857.—Submitted and ordered to be printed.

Mr. EVANS made the following

REPORT.

Mr. Evans, from the Committee on Revolutionary Claims, to whom was referred the petition of the heirs of Captain Joseph Packwood, praying remuneration for the services of their ancestor during the war of the revolution, made the following report :

The petition states that, in the year 1775, the said Joseph Packwood, then a resident of New London, was employed by the agent of the State of Connecticut, to proceed with his vessel to the island of Hispaniola, to purchase and bring to the United States a quantity of arms, field-pieces, and other munitions of war. That in pursuance of this contract, he sailed in December, 1775, and returned in August following, bringing with him 12,000 pounds of gunpowder, fourteen field-pieces, and 300 stand of arms. That the exportation of such articles were at the time prohibited by law, and he encountered great risk of the loss of his vessel, and peril to himself. That in fact his vessel was seized, and he himself imprisoned, during which he contracted a disease, whereby he lost the sight of one of his eyes. He finally, however, succeeded in getting off with his vessel, and delivered his cargo safely to his employers.

The petition alleges that this service was at the time of great benefit to the country, and as most of his property was subsequently destroyed by the burning of New London by the public enemy, and by the loss of his vessel on the high seas, whereby he was reduced to poverty, they ask that Congress will make to his daughter some remuneration for his services, as they are poor, and in straitened circumstances. These are, in substance, the facts set out in the petition.

The petition is unaccompanied by any evidence; but even if all were proved, your committee can see nothing in the case which calls on the government of the United States to make any provision for the petitioners.

1. In the first place, the service was rendered at the instance, and for the benefit of one of the States; and if the powder and arms were used for the benefit of the Union, they were no doubt charged to, and paid for, by the United States, in the settlement of the accounts of the States, for expenses incurred in the common cause.

2. That the enterprise was one of hazard, and the remuneration

was most likely in proportion to the difficulties to be encountered. There is no allegation that he was not paid according to the contract, by the State of Connecticut. It is said in the petition, "that the State once by resolution recognized the truth of the facts above set forth ; and as far as her stinted resources would admit, she recognized the great value of the military services of the said Packwood, at the time of such pressing need.

3. The case does not come within any of the resolutions of Congress providing for payment to those who were in the military or naval service. And if this government were now to undertake to remunerate the descendants of all those who rendered valuable service during the revolutionary war, the treasury, overflowing as it is, would soon be empty. There is nothing which distinguishes this from numerous other claims, which have been refused, and your committee therefore recommend that the prayer of the petitioner be rejected.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1857.—Ordered to be printed.

Mr. WADE made the following

REPORT.

[To accompany bill S. No. 606.]

The Committee of Claims, to whom were referred the memorial of Alfred G. Benson, and the message of the President of the 29th of April, 1856, with accompanying documents, in response to the resolution of the Senate of February 24, 1856, have had the same under consideration, and submit the following report :

On the 2d day of June, 1852, James C. Jewett addressed the following letter to Mr. Webster :

"SIR: Having recently returned from the Pacific, where, with other shipmasters of our country, I should have proceeded to the island of Lobos, adjacent to the coast of South America, for a cargo of guano, where it is to be found, had we possessed the information which I now take the liberty, being about to return, to ask from you, as the highest source from which I can obtain the same.

"I am informed that no government has any rightful claim to these islands, they never having been enumerated amongst the possessions or dependencies of any of the South American States, in defining the extent of their possessions, nor have they been occupied in any way by any nation, being uninhabited; that the valuable deposits in which they abound may be as rightfully taken by a citizen of the United States as citizens or subjects of any country. Unwilling to violate any treaty the government of my own country may have entered into, or any provision of the law of nations, you will oblige me by informing me if, in common with the world, we have a right to take this article of commerce from thence; which information, I need hardly add, will greatly benefit the ships of our country employed in the trade of the Pacific. With sentiments of respect, I am your obedient servant,

JAMES C. JEWETT,

"Master of bark *Philomela*."

"NEW YORK, June 2, 1852."

To this letter Mr. Webster replied, on the 5th of June, as follows:

“DEPARTMENT OF STATE,
“Washington, June 5, 1852.

“SIR: I have to acknowledge the receipt of your letter of the 2d instant, inquiring whether citizens of the United States can take guano from the Lobos islands, which are situated near the coast of Peru, without infringing upon the rights of the citizens or subjects or government of any other nation?

“In reply I have to inform you that, if those islands should be within the distance of a marine league from the continent, or, if being further than that distance, should have been discovered and occupied by Spain or by Peru, the Peruvian government would have a right to exclude therefrom the vessels and citizens of other nations, except upon such conditions as it may think proper to prescribe. There can be no doubt that the title of Peru to the Chincha islands, whence guano is now chiefly taken, is founded upon the basis of discovery and occupancy. That article was taken from those islands and used as a manure by the Peruvians anterior to the conquest of Peru by Spain. It continued to be so taken and used throughout the Spanish dominion in that country, and this practice has been kept up to the present day. Although those islands are uninhabitable, the custom of resorting to them from the neighboring continent for the purpose of procuring guano may be said to have constituted such an occupancy of them as to give to the sovereign of the continent a right of dominion over them under the law of nations.

“The department, however, is not aware that the Lobos islands were either discovered or occupied by Spain or Peru, or that the guano on them has ever been used for manure on the adjacent coast or elsewhere. It is certain that their distance from the continent is five or six times greater than is necessary to make them a dependency thereof, pursuant to public law. On the other hand, it is quite probable that Benjamin Morell, jr., who, as master of the schooner *Wasp*, of New York, visited those islands in September, 1823, may justly claim to have been their discoverer. He gives a full account of them in his narrative, published at New York in 1832. Under these circumstances, it may be considered the duty of this government to protect citizens of the United States who may visit the Lobos islands for the purpose of obtaining guano. This duty will be the more apparent, when it is considered that the consumers of Chincha island guano in this country might probably obtain it for half the price they now pay, were it not for the charges of the Peruvian government. I shall consequently communicate a copy of this letter to the Secretary of the Navy, and suggest that a vessel-of-war be ordered to repair to the Lobos islands, for the purpose of protecting from molestation any of our citizens who may wish to take guano from them.

“I am, sir, very respectfully, your obedient servant,

“DAN. WEBSTER.”

A copy of Mr. Webster's letter of June 5, 1852, has been exhibited to the committee, with the following endorsement upon it, in the handwriting of the late Hon. John M. Clayton :

" March 9, 1855 — This day called at the State Department and saw the original draft of this letter, endorsed ' Approved June 5, M. F.' Clerk said the draft had been carried by Mr. W. to Marshfield, and after his death had been returned to the department by his executors.

" JOHN M. CLAYTON."

The committee are well assured that a draft of Mr. Webster's letter, endorsed as before stated, in the handwriting of President Fillmore, is on the files of the State Department.

It will appear from the following letters, that orders were given by the Secretary of the Navy, in conformity with the suggestion of Mr. Webster, and that notice was given to merchants in various parts of the country of the intention of the Executive to protect American ships in taking guano from Lobos islands.

" UNITED STATES NAVY DEPARTMENT, *June 16, 1852.*

" SIR : The department transmits herewith a copy of a communication from the Department of State, with accompanying papers relative to the rights of citizens of the United States to take guano from the Lobos islands, and instructs you to send one of the vessels of your squadron to the Lobos islands for the protection of our citizens and commerce.

" WILLIAM A. GRAHAM.

" To Commodore F. S. McCauley,

" *Commanding U. S. squadron, Pacific ocean.*"

—
" NAVY DEPARTMENT, *June 16, 1852.*

" GENTLEMEN : In reply to the inquiries contained in your letter of the 14th instant, relative to the Lobos islands, you are informed that instructions will be sent to Commodore McCauley, commanding the United States squadron in the Pacific ocean, by the first mail steamer, to afford protection to our citizens resorting to those islands to procure guano.

" The latitude of the Lobos islands is stated to be nearly in 6° 59' S., and longitude 80° 42' W.; variation 8° 45' easterly.

" I am, very respectfully, your obedient servant,

" WILLIAM A. GRAHAM.

" Messrs. MAGOUN & SON, *Boston.*"

—
" DEPARTMENT OF STATE,
" *Washington, July 10, 1852.*

" GENTLEMEN : I have to acknowledge the receipt of your letter of the 7th instant, inquiring whether it would be safe for you to order a

ship of yours, now on the west coast of America, to the Lobos islands for the purpose of taking in a cargo of guano. In reply, I have to inform you, that it is understood the Navy Department has ordered a vessel-of-war to those islands for the purpose of protecting such vessels of the United States as may wish to load with guano there.

"I am, gentlemen, very respectfully, your obedient servant,

"DANIEL WEBSTER.

"To Messrs. MAGOUN & SON, *Boston.*"

"NAVY DEPARTMENT, *August 22, 1852.*

"SIR: In reply to the letter of Mr. A. M. Frink, addressed to you on the subject of the Lobos islands, you are informed that instructions have been given to Commodore McCauley, commanding the Pacific squadron, to afford protection to our citizens who may resort to those islands to procure guano.

"I am, sir, your obedient servant,

"WILLIAM A. GRAHAM.

"HON. C. F. CLEVELAND."

"WASHINGTON, *July 7, 1852.*

"DEAR SIR: Having seen stated in the public journals that a portion of the Pacific fleet had been ordered to the Lobos islands to protect the interests of American ships loading guano there, yet not having seen any official announcement of the above, we take the liberty to ask you if such is the fact; and if the American vessels loading guano at the Lobos islands will be protected by our fleet at all hazards? If you feel at liberty to answer this question, an early reply will much oblige

"Your most obedient servants,

"DANA & CO.

"HON. WM. A. GRAHAM,

"*Secretary of the Navy.*"

"NAVY DEPARTMENT, *July 9, 1852.*

"GENTLEMEN: In reply to yours of the 7th instant, you are informed that instructions have been given by the department to Commodore McCauley to protect our citizens resorting to the Lobos islands to procure guano.

"Very respectfully, your obedient servant,

"WILLIAM A. GRAHAM.

"Messrs. DANA & Co., *Boston.*"

In consequence of these assurances of protection, which, considering the ample naval power of the United States, were equivalent to assurances of entire safety, Magoun & Son and Dana & Co. dispatched one

ship each to the Lobos islands. A. G. Benson, then a merchant in New York of sufficient means and credit, embarked very largely in the enterprise. While it may be doubtful to what extent, and under what circumstances and limitations, the government may be responsible for opinions given by members of the cabinet which influence the conduct of individuals, it would seem that in this case, in which a line of policy had been determined upon and announced by the Secretary of State and the Secretary of the Navy, with the presumed and actual concurrence of the President, the merchants of the country were justified in conforming their own enterprises to the line of policy thus announced.

On the 21st of August, 1832, in a despatch to the Peruvian chargé d'affaires at Washington, Mr. Webster states elaborately the grounds upon which the claim of Peru, as against the United States, to the sovereignty of the Lobos islands, may be resisted; concluding, however, with the following paragraph:

"The government of the United States, however, is prepared to give due consideration to all facts tending to show possession or occupancy of the Lobos islands by Peru, and is not inclined to stop or preclude discussion until the whole matter shall be thoroughly investigated. If there are any facts and arguments which have not been brought to its consideration, they shall receive the most respectful and friendly attention. If it shall turn out that, as has been intimated above, those islands are uninhabited and uninhabitable, and therefore incapable of being legally possessed or held by any one nation, they and their contents must be considered as the common property of all. Or, if unprotected by the presence of Peruvian authorities, and without actual possession, their use has been by Peru abandoned or conceded, without limitation of time, to citizens of the United States for a long period, or yielded in consequence of the remonstrance of this government or its agents, then no exclusive claim can be pretended, as against the United States at least.

"Under all the circumstances, the President thinks it most advisable that full instructions on this subject should be despatched to the chargé d'affaires of the United States at Lima, and that proper orders should be given to the naval forces of the United States in that quarter, to prevent collision until further examination of the case. No countenance will be given to the authors of such enterprises claiming to be citizens of the United States who may undertake to defend themselves or their vessels by force, in the prosecution of any commercial enterprises to these islands. Such acts would be acts of private war, and their authors would thereby justly forfeit the protection of their own government.

"The undersigned avails himself of this occasion to offer to Mr. Osma a renewed assurance of his very high consideration.

"DANIEL WEBSTER.

"To SENOR DON JUAN Y. DE OSMA," &c., &c.

Mr. Webster's letter of August 21 was published in the Washington city newspapers of August 24. On the 25th of that month the following order was issued by the Secretary of the Navy:

"**SIR** : By direction of the President, you are hereby instructed to suspend, until further orders, the execution of the order addressed to you under date of June 16, 1852, and you are required to abstain from aiding or abetting any citizen of the United States who may forcibly resist the execution of the laws of Peru by the authority of that republic.

"I am, &c.,

"**JOHN P. KENNEDY.**

"**Commodore C. S. McCauley,**

"*Commanding U. S. squadron, Pacific ocean.*"

As soon as this new order reached him, Commodore McCauley issued the following proclamation :

"**A PROCLAMATION.**

"*To all whom it may concern.*

"Whereas it appears that a number of vessels said to belong to citizens of the United States have been chartered to proceed to the islands of Lobos for the purpose of taking in cargoes of guano, I have to inform all men, that I have been instructed by my government at Washington to abstain from protecting any vessels of the United States which may visit those islands for purposes forbidden by the decrees of the Peruvian government ; and I am forbid from aiding or abetting any citizens of the United States who may forcibly resist the execution of the laws of Peru.

"Given under my hand, on board the United States frigate *Raritan*, on the 18th day of October, 1852.

"**C. S. McCauley,**

"*Commander-in-chief U. S. naval forces in the Pacific ocean.*"

And on the same day, in a despatch addressed to the Peruvian government, Mr. Clay, the American minister to Peru, says :

"Acting under instructions from the Navy Department at Washington, Commodore McCauley will prevent any attempt being made by vessels belonging to citizens of the United States to take away guano forcibly from those islands."

There was thus an entire change of policy on the part of the administration, in withdrawing a protection which had been promised to American merchants engaged in the enterprise of obtaining guano at the Lobos islands ; but as yet it does not appear that the opinions of the administration in reference to the rights of Peru had undergone any change.

In a despatch of August 30, 1850, to Mr. Clay, communicating, among other things, the letter to Mr. Osma, of August 21, Mr. Webster says :

"Upon the present state of the facts and the evidence, this government cannot admit the right of Peru to drive away United States vessels from the Lobos islands. We see nothing thus far to change the sentiment expressed in the letter of this department to Mr. Osma, and it would be a want of candor not to say, that we are not aware of any

source from which new facts favorable to the claims of Peru are likely to be drawn. Nevertheless, it is the President's purpose to give a fair consideration to everything which the Peruvian government may produce in support of its asserted right. In the mean time it is a great object to prevent any possible collision. * * * All danger of collision would probably be averted, if the Peruvian government would allow those United States vessel, which have sailed from our ports between the 1st of June and the 24th instant for the Lobos islands, to load with guano without molestation. A letter to the President on this subject from Mr. Bokee, the naval officer at New York, is herewith transmitted. This communication fully sets forth the importance of the measure to the parties immediately interested."

In the same despatch, after suggesting certain considerations to be submitted by Mr. Clay to the Peruvian government, calculated to induce that government to reduce the prices of guano, Mr. Webster says:

"You will cause the Peruvian government to understand that these last observations are submitted with no purpose whatever of expressing any doubt of the right of citizens of the United States to visit these islands, as they have for so many years been accustomed to do, or relaxing from their demands in that respect."

And it does not appear that the personal opinions of Mr. Webster, in reference to the Peruvian title to the Lobos islands, were ever changed. The opinions of the administration, however, were soon essentially changed, as will appear from the following letter:

"DEPARTMENT OF STATE,
"Washington, September 21, 1852.

"SIR: In the letter from this department to you, of the 30th ultimo, you were informed that the information which our government possessed 'respecting the acts of jurisdiction which both Spain and Peru may have exercised' over the Lobos islands, was by no means complete, but that, 'as it was the President's purpose to give a fair consideration to anything which the government of Peru might produce in support of her asserted right of ownership' over the islands, you were directed to supply the deficiency in our knowledge on this subject from such sources of information as are no doubt accessible to you.

"In your despatch No. 105, dated 17th ultimo, and which was received on the 16th instant, you have, to some extent, anticipated the above request, and furnished information on some of the points on which it was requested.

"It is proper to add, also, that prior to the receipt of this despatch, in consequence of the information contained in the one that preceded it, dated 24th June, the President was induced to believe that the claim of Peru to exclusive dominion over these islands was better founded than it had been led to suppose. The orders that had been despatched to the commander of our naval forces in the Pacific to protect such of our vessels as might wish to take cargoes of guano from these islands, were accordingly countermanded some weeks since.

"The President now directs me to say, that the information contained in your last despatch has materially changed the aspect of the case,

and that candor and fair dealing, as well as the interests of both countries, require that this should be made known to the Peruvian government as speedily as possible.

"You will therefore avail yourself of the earliest opportunity of assuring the government of Peru that the President would deeply regret if anything in the language or the acts of this government should have been construed as evidence of a wish to encroach on the rights or the territory of Peru.

"That the policy of Peru in granting a monopoly of the guano trade is considered by this government as illiberal and impolitic, inasmuch as it imposes very vexatious burdens and restrictions on foreign nations, without any corresponding benefit to herself.

"That as this policy bore very hardly upon our citizens, and created great dissatisfaction, the government had determined to subject the claim set up by Peru to exclude all other nations from the right of taking guano from these islands to the most rigid scrutiny. That as the islands were uninhabited and of so little value that their very existence was, until recently, scarcely known, this government had no knowledge of the acts of ownership or jurisdiction on which the government of Peru rested its claims of sovereignty over them; and until an opportunity should be afforded of investigating that claim, wished to avoid doing anything which could be interpreted into an admission of its validity. That since the communications heretofore made to that government further information has been obtained on the subject; and although that information is not considered sufficient to establish conclusively the title of Peru to these islands, it does nevertheless, when taken in connexion with her actual possession of and exercise of jurisdiction over them, create in her favor such a presumption of title as this government is bound to respect, unless on further investigation it should prove to be unfounded. That this department, therefore, acted somewhat hastily in assuming that the Lobos islands were waste and unappropriated land, from which the citizens of the United States had a right to take guano, in common with those of Peru.

"That having arrived at this conclusion, a proper sense of what is due to the character of the nation for justice and fair dealing, as well as the strong desire entertained by him to cultivate the most friendly relations with a sister republic, has prompted the President to lose no time in making this prompt declaration."

* * * * *

"C. M. CONRAD, *Acting Secretary*.

"JOHN RANDOLPH CLAY, Esq., &c."

The change of opinion, on the part of the administration, in respect to the rights of Peru, is ascribed, as will be seen, very much to the efforts and representations of Mr. Clay, who seems to have been early and powerfully impressed with the justice of the pretensions of Peru, and to have spared himself no pains in vindicating them.

On the day on which the above letter of Mr. Conrad was written, another letter, marked "*Private*," was despatched by him to Mr. Clay, of the following tenor:

"Since the accompanying despatch from the State Department was prepared, Mr. de Osma, the newly appointed minister of Peru, has announced to the department his arrival in Washington. He has not yet presented his credentials, but there is reason to believe that he is fully authorized to negotiate on all matters pending between the two governments.

"For this reason, while it is considered advisable that the despatch should be transmitted, as originally intended, it is thought safer not to communicate its contents to him or his government until after we have heard what he has to say. You will, therefore, not make known to the Peruvian government the instructions contained in the despatch until you are directed to do so by a note which I shall address you to that effect."

In a despatch of October 1, 1852, to Mr. Clay, Mr. Conrad, acting Secretary of State, says :

"Since the last despatch to you from this department, it has learned that the number of vessels which have sailed from the United States for the Lobos islands is greater than it had been led to suppose, and that even should they be furnished with a return cargo in guano, which, by your despatch of the 17th of August, 1852, the department was informed they would be, the freight they would thus earn would not indemnify their owners. The expense of fitting out vessels for this business is said to be considerable, besides which, it is reported to the department, that some persons embarked in this business in consequence of a letter from this department, in which the opinion is expressed that United States vessels had a right to take guano at the Lobos islands, and that our naval forces in the Pacific would be instructed to protect them in the exercise of this right—and had, in consequence of this letter, made contracts for delivering the article at prices much below its ordinary market value. * * * You will state these circumstances to the Peruvian government, and will earnestly press upon them to allow the vessels that sailed for the Lobos islands, in consequence of the letter above mentioned, to load with guano on their own account. * * * To guide you in determining what vessels are entitled to claim the benefit of your interposition, I will state that the letter above referred to was addressed to Mr. J. C. Jewett on the 5th day of June last, and that a letter to Mr. De Osma, informing him that the order to Commodore McCauley had been countermanded, was published in this city on the 24th of August last."

On the 7th of October, 1852, the new Peruvian minister near this government addressed to the acting Secretary of State, Mr. Conrad, an elaborate despatch, reviewing and enforcing the grounds upon which were based the pretensions of Peru in respect to the Lobos islands. The reply of Mr. Conrad, dated two days afterwards, avoids any final acknowledgment by our government of the rights of Peru, but presses vigorously for some stipulations in favor of those of our citizens who had embarked in the enterprise of obtaining guano from the Lobos islands. It is evident that the administration, sympathized properly and warmly with those who had been led into this

enterprise by its own promises of protection, and was determined to spare no effort to obtain good terms for them from Peru.

Mr. Conrad's reply of October 9 to Mr. Osma was as follows :

"The undersigned, Acting Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. de Osma, envoy extraordinary and minister plenipotentiary of the republic of Peru, of the 7th instant, containing an exposition of the claims of that republic to the Lobos islands.

"The undersigned has not yet had time to examine this paper with the attention its importance deserves, and will defer replying to it until this government shall be possessed of all the information on the subject it will be in its power to procure.

"In the mean time the undersigned is directed to call the attention of Mr. de Osma to another matter connected with this subject. Mr. de Osma is aware that the order which directed the commander of the naval forces of the United States in the Pacific to protect American vessels in the exercise of the right to take guano from the Lobos islands was subsequently revoked.

"The undersigned has already had the honor to explain orally to Mr. de Osma that this government had not intended, by the revocation of that order, to abandon its own claim, or to admit that of Peru. But that, as it was alleged that Peru had recently taken possession of the islands, and asserted her jurisdiction over them, and as the question was a doubtful one, the proper solution of which depended on facts in regard to which this government was not fully informed, it had, to avoid giving any cause of offence to Peru, and possibly interrupting the friendly relations between the two governments, determined to waive the enforcement of any rights it might possess until the question could be fully investigated.

"Mr. de Osma is aware, however, that a number of vessels belonging to citizens of the United States have sailed for the Lobos islands under the belief (in part occasioned by the act of this government) that they should be protected in the right to take guano therefrom. What is to be done with these vessels? The chargé d'affaires of the United States at Lima has informed this department, in a despatch of the 7th of August last, that they would, at the option of their captains, sail for another destination, or be chartered by the agents of the Peruvian government to carry guano to the United States or England. But the owners or charterers of these vessels were not induced to send them on this distant voyage merely on account of the freight they might earn ; and it is feared that, in some cases, the freight on the guano, at the customary rates, will not even reimburse them for their actual outlay, including the charter parties, outfit, &c. Besides, it has been reported to this department (whether correctly or not the undersigned is unable to say) that some of the parties engaged in this adventure, supposing they would be allowed to load guano on their own account, have made contracts to deliver it at prices much below its ordinary market value.

"The undersigned is directed to say to Mr. Osma that this government deeply sympathizes with these persons, and feels it a duty incumbent on it to do all in its power to enable them to realise their

just expectations. The undersigned, therefore, begs leave to express the hope that these vessels—that is to say, those which sailed (or had orders to sail which could not be countermanded before sailing) for the Lobos islands in the interval between the 12th day of June (the date of the letter communicating the order to Commodore McCauley referred to) and the 24th day of August last, (when the revocation of that order was made known,) will, under all the circumstances of the case, be permitted to load on their own account. The undersigned submits that this concession on the part of Peru would be but a proper return for that comity and forbearance which this government has exhibited in reference to this subject. On the other hand, it must be apparent that in case these vessels should be prevented by the Peruvian government from taking their cargo, and it should hereafter appear that this was a wrongful act on its part, their owners or charterers would have a claim for indemnity against Peru which this government would be bound to enforce.

“The undersigned would also suggest, that such a proceeding, while it would not diminish the desire or the obligation of this government to do full justice to Peru in reference to this question, would, by complicating it with private interests and the feelings growing out of them, retard, if it should not seriously embarrass, its final and satisfactory adjustment.”

In the final arrangement of the 16th and 17th of November, 1852, embracing all the questions in controversy, the Peruvian title to the Lobos islands was admitted, and stipulations were made for the benefit of the parties with whom our government declared it “*deeply sympathized, and felt it a duty incumbent on it to do all in its power to enable them to realize their just expectations.*”

Mr. Clay, at Lima, on the 25th of October, 1852, made the following declaration to the Peruvian minister of foreign affairs :

“The undersigned, after a scrupulous and careful investigation of all the points connected with the subject, as well those mentioned in his excellency’s note as those which have come under his own observation, feels himself constrained to admit that, in his opinion, the right of the Republic of Peru to the sovereignty and possession of the islands of Lobos de Afuera and de Tierra is perfect and unquestionable.”

To say nothing of the fact that this was merely the unauthorized and volunteered declaration of Mr. Clay, made in distinct and flat contradiction to the opinions of his own government as then expressed to him, Mr. Conrad’s letter of September 21 not having been received by him until the 30th of October ; it is sufficient to observe that this declaration was not known at Washington at the date of the arrangement of the 16th and 17th of November, and had no influence whatever upon the terms of that arrangement.

On the 16th of November, 1852, Mr. Everett addressed a note to Mr. de Osma, admitting, without reserve, the justice of the pretensions of Peru in respect to the Lobos islands ; and on the following day Mr. de Osma replied as follows :

“LEGATION OF PERU,
“Washington, November 17, 1852.

“The undersigned, envoy extraordinary and minister plenipotentiary of the republic of Peru, has received the note which his excellency Mr. Everett, the Secretary of State of the United States, has been pleased to direct to him, under date of yesterday, informing him that he had submitted to the President the communication which the undersigned had the honor to forward to the department on the 7th of October last past, relative to the rights of Peru to the Lobos islands, and the document on the same subject forwarded by the chargé d'affairs of the United States at Lima; and having examined them with the most serious attention, the President has, he is informed, concluded to dispel all doubts that he might have entertained with regard to the right of Peru to the said islands, and has ordered his excellency the Secretary of State, in the name of his government, to recognize the right of that republic, assuring the undersigned that the United States would, under no circumstances, lend their protection to the American citizens or vessels that might proceed to the said islands without previously having obtained permission to that effect from the Peruvian government, or that might not submit to the regulations in force in that Territory.

“The undersigned cannot but express to his excellency Mr. Everett the satisfaction with which he learnt the resolution which has been made known to him, and which, in his opinion, proves the impartiality of his government in the examination of the question, while, at the same time, it justifies the confidence with which that of Peru appealed to its intelligence, and its respect for the rights of a friendly nation. In these circumstances the undersigned would fear that he did not acknowledge, in a proper and befitting manner, the sentiments contained in the note of his excellency Mr. Everett, did he not, in his turn, express the pleasure with which he receives the particular recommendation that has been made to him in favor of the vessels despatched by the citizens of the United States to the Lobos islands, under the impression that they could freely take guano; and he has the honor to offer to the honorable Mr. Everett, in the name of his government: *Firstly*. That the American vessels that left the ports of the United States since the 5th of June to the 25th of August last, freighted to get a cargo of guano at the said islands, (and of these the undersigned sends a list, the most correct which he has been able to form, with the data which he has gathered,) shall be freighted on account of the government of Peru, to load at the Islands of Chincha at the rate of twenty dollars (*pesos fuertes*) per ton—the owners or shippers assigning over the contracts which they have made to the consignees and agents of Peru in the United States. *Secondly*. There shall also be taken by the Peruvian government, for its own account, the instruments or utensils intended for procuring the guano, and carried by said vessels, the fair prices of the same being paid at Callao to the captain by the agents of the government for the exportation of guano prior to the delivery of the articles. *Thirdly*. The vessels freighted in the ports of the Pacific with the same object, by virtue of

orders coming from the United States prior to the 25th of August, and that cannot have been recalled since, will also be taken at freight by the government of Peru at the same price of twenty dollars per ton; provided always the charter parties be presented and endorsed over to the said agents of Peru in the United States before the 1st of January next.

"The undersigned hopes that these measures will satisfy the interest which the honorable Mr. Everett has manifested in favor of the persons having sent their vessels to the Lobos islands; and, taking advantage of this opportunity to manifest his gratitude for the willingness which he had found both in his excellency the President and in the honorable Mr. Everett to terminate this affair in an honorable manner, and one worthy of the relations uniting Peru to the United States, he renews to his excellency the assurance of the high consideration and esteem with which he remains,

"His most obedient servant,

"JOAQUIN DE OSMA.

"Hon. SECRETARY OF STATE OF THE UNITED STATES."

These letters of Mr. Everett and Mr. de Osma were evidently concerted, and form parts of an entire arrangement agreed upon between the negotiators. Mr. Everett so speaks of it in a letter addressed to Mr. Clay, on the 18th of November, 1852, in which he says:

"You will learn with satisfaction that a definitive arrangement has been concluded between Mr. de Osma and this department of all the matters in controversy."

It is apparent from this history of the negotiations which resulted in the stipulations entered into by Peru on the 17th of November, 1852, that they were not accorded as a matter of favor, but were influenced by a consideration of the most ample character. The exclusive title of Peru to the Lobos islands, especially as against the United States, had been doubted by the highest authorities both in England and in this country, and upon grounds by no means light or ill considered. The credit of Peru abroad and her social stability at home, depended upon preserving her guano revenues intact. To obtain, after doubt and discussion, an express recognition of her claims by the United States, would be to place her in a better position than before doubt and discussion had arisen. The pecuniary interests involved were vast, as were also the personal and political interests involved, of the men in power in Peru.

Mr. Clay, in a despatch of December 21, 1852, to Mr. Everett, says:

"The settlement of this question is of the utmost importance to Peru; for if the United States had denied the right of this government to the sovereignty over the islands of Lobos, its credit abroad would have been destroyed for the time, as the introduction of the Lobos guano into the market at a low price would have effectually prevented the sale of that from the Chincha islands. Besides this, it would have lost the guano on the Lobos and the adjacent islands, amounting to about two millions of tons; estimated to be worth at least sixty millions of dollars. A national bankruptcy must have en-

sued, followed probably by a succession of revolutions in the country. This President Echenrique knew."

To obtain an assured title to a property of the value of sixty millions of dollars, to avert bankruptcy abroad and revolution at home, the concessions finally exacted of Peru were trifling indeed. They fell far short of the terms insisted upon in Mr. Webster's despatch of August 30, to Mr. Clay, in Mr. Conrad's despatch of October 1, to Mr. Clay, and in Mr. Conrad's despatch of October 9, to Mr. de Osma, that the parties who had despatched vessels to the Lobos islands between the 5th of June and the 25th of August, should be permitted to load guano on their own account. No measure of concession, indeed, short of this would enable the parties who had despatched those vessels to realize their reasonable expectations, and it must have been with extreme reluctance that Mr. Everett felt compelled to assent to anything less.

To what extent, indeed, did the agreement of Peru of November 17th involve pecuniary loss to her, or pecuniary advantage to our merchants, by way of indemnity for their immense sacrifices, growing out of the sudden and forced abandonment of the enterprize of obtaining guano from the Lobos islands? At the utmost, it was only an agreement by Peru to pay a freight upon guano, exceeding by four dollars per ton the then average rates of freight, and this upon a limited amount of tonnage, not amounting in the aggregate to one half of one per cent. of the estimated value of the guano upon the Lobos islands. This was the utmost amount of loss by Peru then anticipated, and, in the end, it turned out that Peru actually gained rather than lost. Notwithstanding the immense number of vessels sent to the guano islands by Mr. Benson and others, in consequence of assurances of protection from this government, the increase in the demand for guano grew up so much more rapidly that the current rates of guano freights soon rose to twenty dollars per ton, and even to thirty dollars.

In a despatch of April 11, 1853, to Mr. Everett, Mr. Clay says:

"And here it may be observed, that the discussion of the title to the Lobos islands has proved, in the end, advantageous to Peru, as without the vessels chartered by Mr. Benson there would not have been sufficient ships to carry one half the quantity of guano required for consumption in the United States. The agents of the Peruvian government are now chartering transient vessels at twenty dollars the ton to carry guano to that market, and I have been informed by Mr. Barreda that he shall not be able to send forward enough to meet the demand for the article.

"It is satisfactory, therefore, to believe that no losses will accrue to any one from the Lobos islands question."

And it will appear from the letters of Mr. Benson to the State Department that, by the time the vessels chartered by him had returned to the United States, guano freights had advanced to thirty dollars per ton. Of course, under the same demand for guano, freights would have gone still higher, but for the great amount of extra tonnage supplied by the Lobos islands enterprize, and it is altogether probable

that Peru would have been absolutely disabled to meet the requirements of the market by the want of tonnage.

It is most manifest, therefore, that the stipulations by Peru of the 17th of November, entered into in consideration of acknowledgments by the United States, most important and even vital to her, stipulations resulting in no pecuniary loss to her whatever, stipulations in favor of parties whose enterprises, as the sequel proved, secured to her vast amounts of money, should be construed in a liberal and comprehensive spirit, and not be frittered away by evasions. And especially is this enforced by the fact, that the beneficiaries of these stipulations were not consulted about them, knew of them only after they were finally agreed upon, and had, therefore, no opportunity to protect themselves by attention to the phraseology in which they were clothed.

The plain intent and meaning of these stipulations was, to secure to the charterers of vessels sent to the Lobos islands the excess of twenty dollars per ton above the rate they had agreed to pay, as an indemnity liquidated, so far as our government had a right to liquidate it without consulting the charterers, for their losses resulting from the breaking up of their enterprise. And there is good reason to believe that these stipulations, in respect to Mr. Benson, have been violated, and that he has received but a portion of the indemnity intended to be provided for him.

A construction of the arrangement of November 17 has been adopted by Peru, that Mr. Benson should receive the freight of twenty dollars per ton only in the case of vessels whose captains would take their cargoes under his charters; and that, if they protested those charters, and took new charters from Peru, his only remedy would be a suit against them for such damages as might be legally recoverable against them. Mr. Benson saw early that by this course of procedure he should lose the benefits of the arrangement of November 17, and made the most earnest efforts to save himself; first, by proposing that Peru should agree to pay twenty dollars freight for a liquidated number of tons; and, secondly, by insisting that the agents of Peru should not give employment to vessels which refused to load under his charters.

In a letter addressed to Mr. Everett on the 27th of November, 1852, Mr. Benson, says:

"The action of this government in suspending its orders to protect our shipping while engaged in loading guano, at the Lobos islands, and the proclamation of its officers in the Pacific, warning ship owners against violating the decrees of Peru in regard thereto, have induced many ship owners to abandon their charters, and if this should be the case generally, the honorable Secretary will not fail to perceive how injuriously it would affect my interests. All the expenses have been incurred for labor, materials, &c., to load fully one hundred thousand tons of shipping, forty thousand of which are estimated to be under engagement up to this date. Now, what I desire is that the Secretary of State will request the Peruvian minister to consent (under the arrangement recently made between the two governments) to liquidate at ——— tons, per register of ships, which

shall be delivered on board vessels chartered by me, and to extend the time for presenting the charter-parties for endorsement. Such a settlement made now will prevent future differences from occurring between the charterers of the ships and the Peruvian government or its agents, and difficulties to our own government in the settlement of disputes arising therefrom, and as there is no reason to suppose the minister of Peru would object to such a request, I beg leave most respectfully and earnestly to hope that it may be made."

On the first of December Mr. Everett, enclosing to the Peruvian minister the foregoing letter of Mr. Benson, says:

"If in your power to come to an arrangement in behalf of your government, like that which he (Mr. Benson) suggests, it may be for the interest and convenience of all parties."

This request, calculated to put an end to all disputes, and endorsed by Mr. Everett as being "*for the interest and convenience of all parties*," was referred by the Peruvian minister to his government, by whom it was absolutely rejected.

On the 21st of February, 1853, Mr. Benson addressed a letter to Mr. Clay, appealing to him to urge upon the government of Peru, among other things, the following:

"That the government of Peru will not only *not* encourage the breaking of contracts made with me, but will direct that such ships, and such ships *only*, as conform thereto shall be loaded with guano at all, and that their agents, Messrs. Barrera & Brother may be directed to cancel all subsequent charters made by them with the owners of vessels previously chartered to me, and not to make any such others."

Notwithstanding all the remonstrances of Mr. Benson, the agents of Peru continued to take charters on their own account of the vessels previously chartered by him, of their owners in this country and of the captains in the Pacific. The stipulations of November 17 became, in this way, as to such vessels, a practical nullity.

No such construction of those stipulations can be tolerated for a moment. Peru should be held to a good faith in the execution of those stipulations, commensurate with the ample consideration she received for entering into them. She agreed to pay to the charterers of a certain class of vessels twenty dollars per ton freight, and must not escape her agreement by entering into new contracts of her own with those vessels, or otherwise inducing them to throw up their contracts with the original charterers. Even if by possibility the words of the arrangement of November 17 could be made to bear such a construction, its spirit, the history of the negotiations which led to it, the largeness of the consideration which Peru received for it, and the immense pecuniary benefit she has derived from the whole transaction, combine to condemn it. The beneficiaries of that arrangement, having no opportunity to be consulted about its phraseology, and to insert into it securities against bad faith, are entitled to the most favorable construction of its language.

It was a mere mockery to turn Mr. Benson round to imaginary remedies under his charter parties against owners or captains who should enter into new charters with the Peruvian agents. The expedition to the Lobos islands having been denounced as illegal by the

Peruvian government, and at length admitted to be such by this government, it is doubtful if any of the charters entered into by Mr. Benson could be enforced by him, although they might be enforced *against* him. If, however, they retained any legal value as against captains and owners, still, if they only authorized Mr. Benson to despatch them to the Lobos islands, or to some "*neighboring island*," it is doubtful if they authorized him to send them to the Chincha islands, where only Peru would permit them to be loaded. The remedies of Mr. Benson under his charter-parties, to which the agents of Peru so often taunted him to resort, were, under all these circumstances of doubt and difficulty, illusory and imaginary.

We come now in the history of this transaction to an agreement entered into on the 8th of January, 1853, between Mr. Benson and the agents of the Peruvian government, of which the portions material to the points now under discussion were as follows:

"The undersigned, A. G. Benson, esq., of New York, and F. Barreda and Brother, of Baltimore—the first as charterer for the vessels to be named thereunto bound to load at the Lobos islands; and the second acting as agents for the Peruvian government, and under the instructions of his excellency the envoy extraordinary and minister plenipotentiary of Peru at Washington—have entered into the present agreement, in accordance with the concession made by Mr. Osma for the taking up, under charter for account of the Peruvian government, of the said vessels chartered by the said Mr. Benson to be sent and loaded with guano at the Lobos islands, to wit:

"1st. A. G. Benson will endorse to F. Barreda and Brother the charter-parties of the following vessels named in a list directed by Mr. Jewett to the Department of State on the 16th of August. [Here follows the list.] The said charter-parties to be filled by the said F. Barreda and Brother, provided that the captains of these vessels may agree to load at the 'Chincha islands,' instead of the Lobos islands, as they may have been ordered, without increasing the rate of freight or asking for any change in the conditions stipulated with Mr. Benson.

* * * * *

"3d. With the view of giving to Mr. Benson all possible facilities to obtain from the owners, agents, or captains of the vessels he has chartered, the change of place to load asked for, per articles 1st and 2d, Barreda & Brother, acting under instructions from the Peruvian minister, offer to despatch the said vessels direct to one of the Chincha islands, from San Lorenzo islands or Callao, or from Payta or the Lobos islands, (where they may arrive or call for orders,) and from the said Chincha islands direct to the United States, as per charter parties.

* * * * *

"5th. F. Barreda & Brother will pay to these vessels, transferred by Mr. Benson, the freight, as stipulated by charter-parties, and the difference between the rate therein agreed and that of \$20, as allowed by the Peruvian minister, will be paid to Mr. Benson on the same terms as to the vessels, with deduction of five per cent. commission on

the total amount of freight at \$20, that Mr. Benson agrees to pay to the said F. Barreda & Brother.

"6th. It is hereby stipulated and agreed that the endorsement of Mr. Benson will be void and without effect for those charter-parties of vessels whose captains, under any pretence, may refuse to fulfil them or to change the place of loading, as required in this agreement. The said charter-parties, with copy of the protest of the agent of F. Barreda & Brother, to be returned to Mr. Benson without any responsibility to F. Barreda & Brother for the endorsement now made, or for any of the conditions, stipulations, or allowances, made to Mr. Benson, or to the vessels, by the said F. Barreda & Brother, on their name, or on that of those they represent in this agreement, as it is understood that this arrangement, with all its conditions, stipulations, and allowances, has been made, is to be considered, and will be executed only with reference to and for those vessels whose captains may be willing to carry into effect fully and strictly the charter-parties made with the said A. G. Benson or his agents, and the alterations hereby mentioned and agreed between the said Benson and F. Barreda & Brother, in accordance with and in fulfilment of the offer made by the Peruvian minister in the name of the Peruvian government.

* * * * *

"In testimony whereof the parties have signed four copies of this agreement, made at Baltimore on the 8th of January, 1853."

It appears from a letter of Barreda & Brother that the Peruvian minister was present when this agreement was drawn up.

The most extraordinary assumptions have been made in reference to this agreement of January 8. It is said that it was a private agreement, made with Barreda & Brother as private individuals, and enforceable in our courts of justice like any other contract between private persons, or that, at any rate, it can now be so enforced, because Barreda & Brother have since acknowledged or assumed a private and personal liability under it. It is said further, that this private agreement of January 8 became substituted for the public engagement entered into by Peru on the preceding 17th of November. And upon these two assumptions is built the crowning assumption that the government of the United States was thereby released from all its responsibilities.

The agreement of January 8 was not a private agreement of private individuals. It was made by Barreda & Brother as the agents of Peru, in the presence of and under the instructions of the Peruvian minister at Washington, purports on its face to be intended to be framed "*in accordance with the concession made*" by the same minister on the 17th of November, and was subsequently recognized and ratified by the Peruvian government as a public transaction. If it now possesses the quality of being enforceable as a private contract, this quality is derived not from the original framing of the instrument, but from the subsequent admissions and agreement of Barreda & Brother. It is a quality superadded to it by an acknowledgment on their part, which they volunteered to make, which Mr. Benson had no means of coercing from them, to which he was not a party, and

which, therefore, in no possible sense can be considered as affecting the original character of the transaction.

If, however, the agreement of January 8 was a private agreement between Mr. Benson and Messrs. Barrera & Brother, by what right could Peru set it up as a defence against her own agreement of November 17? This last named agreement still remained good, to be satisfied only by a fair performance, or by adequate and ample damages for non-performance.

The new agreement of January 8, whether to be regarded as public or private, is only cumulative, and leaves the agreement of November 17 in full force. If it be true that a contract may sometimes be satisfied and extinguished, not by performance, but by a contract of greater solemnity and of a higher character, certainly it cannot be claimed by Peru that any individual agreement could possess sanctions and a responsibility superior to those of her own sovereign engagements.

Even if the agreement of January 8 had been in the exact words of the agreement of November 17, and if the personal liability of Barrera & Brother had been clear and undisputed from the outset, it is not competent for this government to avoid its responsibility for the first agreement, by calling upon Mr. Benson to pursue his remedies in courts of justice against individuals upon the second agreement. A contract may be valueless in a court of law, under a strict and technical construction of words, and under an exclusion of all the preceding facts and surrounding circumstances, which may possess the highest value in a different forum. This government had led Mr. Benson, by assurances of protection, into an enterprise involving his entire means and the utmost extension of his credit. Compelled afterwards to withdraw its protection, it still felt and acknowledged its duty to avert the ruin which menaced him, and it insisted upon and obtained from Peru an agreement, not only intended for the benefit of its citizens, but for its own relief, rendering to Peru therefore a consideration of immeasurably greater value. Such an agreement, in its construction and in all its aspects and circumstances, differs totally and essentially from an agreement, even in the same words, between Mr. Benson and a mercantile firm in Baltimore, with no recital of preceding facts, and to be enforced in a court of law, under technical rules, narrowing the range within which proofs might be introduced of surrounding circumstances. In short, Mr. Benson is entitled to pursue the benefits of the agreement in the same forum in which it was made, unless by some act of his own he has distinctly waived that right.

The agreement of January 8 differs from that of November 17 in two noticeable particulars only. It contains an agreement by Mr. Benson to pay Barrera & Brother five per cent. commissions, or one dollar per ton on all the guano freights coming within the scope of the arrangement. It would also admit Mr. Benson to the benefit of the stipulations of November 17, in respect to vessels chartered in the Pacific, if there were any such, the charters of which had not been endorsed over to the agents of Peru prior to the 1st of January.

We have the statement of Mr. Benson that he entered into this

agreement to pay commissions solely in consequence and in consideration of the promise of Barreda & Brothers to make him an advance of fifty thousand dollars, urgently needed to sustain his mercantile credit, then tottering to its fall under the immense liabilities of this Lobos island enterprise. This statement is confirmed by two witnesses, Captain J. C. Jewett and R. W. Trundy.

That Barreda & Brother agreed to advance Mr. Benson fifty thousand dollars, they do not deny. They insist, however, that it was coupled with the condition that he should furnish good security for the money, and that he failed to furnish such security. This statement will hardly bear examination. There was no occasion, in the first place, for any security at all, beyond the complete and adequate security they already had in the differences of freight which would become payable from them to Mr. Benson, under their own agreement of January 8. And, in the second place, a loan of money upon "*good security*," which might have been obtained anywhere, was no adequate consideration for an allowance of commissions nearly or quite equal in aggregate amount, if the agreement of January 8 had been fairly carried out, to the money proposed to be loaned.

But, whatever may be the relations of Mr. Benson with Peru, or with Barreda & Brother, growing out of the agreement of January 8, it is quite obvious that the claim of Mr. Benson upon this government can be no otherwise affected by it than as that claim may have been diminished by satisfaction in whole or in part, by Peru or its agents, under the provisions of that agreement.

This government was not concerned in the agreement of January 8, did not advise to it, and is not the guarantor of either of the parties to it. If, under this last agreement, Barreda & Brother have any legal claim upon Mr. Benson for commissions, they must enforce it by an appeal to the legal tribunals. This government cannot concern itself with the conflicting pretensions of parties in respect to private transactions and agreements.

It is apparent, from the terms of the agreement of January 8, that Mr. Benson had doubts of his right to compel vessels ordered to the Lobos islands to load at the Chincha islands. To induce them to do so, he stipulated for their right, contrary to the ordinary practice of Peru, to proceed direct, without touching at Callao, to the Chincha islands, and thence direct to the United States.

He stipulated further that the agreement of Peru to furnish guano freights should only apply in favor of such vessels as would load under their charter-parties made with him. Manifestly, it was contemplated that the inability of such vessels to obtain freights, except under their charter-parties with him, should be held out as an inducement to them to load under those charter-parties; and while this inducement would have been effective, it was not oppressive or unjust. The loading by Peru of vessels, whose owners or captains threw up and protested their charter-parties with Mr. Benson, was a fraud, both upon the agreement of November 17th and upon the agreement of January 8th, wholly unanticipated, and therefore not guarded against by express prohibition in words. The prohibition, however, results with no less certainty from the whole context of those agree-

ments. No doubt about it can exist in any intelligent and ingenuous mind. If it was not imperative upon Peru to pay Mr. Benson differences of freight upon vessels refusing to proceed under his charter-parties, it was imperative upon Peru to avoid the suspicion of inducing vessels to protest their charter-parties with him. That suspicion she cannot escape, so far as she has employed such vessels, it being altogether certain that, but for the employment held out by Peru, there would have been no protesting of Mr. Benson's charters by the vessels which sailed under their charters.

That Barreda & Brother, and the agents of Peru at several points, proceeded to take many of Mr. Benson's vessels into their own employ, appears abundantly in all the papers in the case. Indeed, the practice and the assertion of the right were publicly proclaimed by the government of Peru, as will appear by the following

“ DECREE.

“ LIMA, May 7, 1853.

“ In virtue of the agreement made in the United States, under authority of the minister of the republic, the obligation to freight for account of the firm of ‘Benson’ ceases, in case the captains refuse to submit to that agreement. Communicate the contents of this note to the minister in the United States, and approve the measures taken by the house of Barreda & Brother, in virtue of its having chartered the vessels referred to in this note; in that it has acted, consulting not only the national interest, but also that of the United States, for whose markets it is necessary to provide guano, making use of the vessels which offer themselves. Without the rights of the firm of Benson being thereby prejudiced, but rather favored; seeing that, if they have any in such cases, they can proceed against the captains who have refused to carry out the charter-parties for account of that firm, and against the sums of money which, under the new charter-parties, are to be paid to the house of Barreda & Brother. The responsibility of the government, on the other hand, being ended as far as those vessels are concerned, and all legal proceedings being ended by the protest made by the house of Barreda & Brother. Communicate this, also, to the minister of the United States in this capital, and transcribe it for the ministry of finance.

“ Signed by his excellency,

“ TIRADO.”

Mr. Benson was bound by his charter-parties to pay all port charges and tonnage duties. He assumed this stipulation upon himself, because there would be no port charges and tonnage duties at the Lobos islands, if they were regarded as outside of the jurisdiction of Peru. The government of Peru, having taken his charters, was clearly bound to perform this stipulation, and, in fact, recognized the obligation in the following decree:

“ Decree of the President of Peru, ratifying the agreement between A. G. Benson and Barreda & Co., of the 8th January, 1853.

"LIMA, February 21, 1853.

"Having considered the agreement entered into by Barreda and Brother, under instructions from the plenipotentiary of Peru at Washington, said agreement is approved, and, in consideration, that by the charter contracts the charges and expenses, and port duties, were chargeable to the charter-parties, A. G. Benson, *and now, by the endorsement of the former appertain to the government*, the minister of finances will direct what is proper, both in order to carry out the conditions of this agreement, as well as to prevent the levying of tonnage and port duties upon vessels mentioned in the subjoined lists, and which shall belong to the category of those vessels entitled to such concessions, &c., &c."

Equally clear was the duty of the Peruvian agents to load the vessels chartered by Mr. Benson, within the number of lay-days allowed by their charters, or to hold him harmless from all claims for demurrage.

The authorities cited in a report made to the State Department by Mr. Johnson, an extract from which accompanies this report, would seem to leave little doubt, that by the phrase "*pesos fuertes*," used in the agreement of November 17, Spanish silver dollars were intended.

Your committee propose now to state, briefly, to what extent Mr. Benson has received the interposition and good offices of this government in enforcing the agreement of November 17.

On the 26th of April, 1853, Mr. Benson addressed the Secretary of State in relation to his right to a difference of freight on the "Golden Era," then just arrived in the United States. On the 3d of May Mr. Marcy replied, as follows:

"As the 'Golden Era' is one of the vessels included in the arrangement referred to, and is upon the list furnished by Mr. Osma of the vessels entitled to the benefits of the settlement, the department does not anticipate that you will experience the slightest difficulty in your business relations with the agents of Peru."

Notwithstanding the anticipations of the State Department, the agents of Peru have steadily refused to the present time to allow Mr. Benson anything on account of the "Golden Era;" and Mr. Clay, our *chargé d'affaires* at Lima, instead of remonstrating, has upheld and justified the Peruvian government in this refusal.

On the 5th of October, 1853, Mr. Benson apprised Mr. Marcy, that the Peruvian agents "*utterly refused*" to allow him anything on account of the "Golden Era" and the "J. W. Paige," and refused to settle the charters of the "J. Q. Adams," "Sarah Chase," and "Arcole," unless he would submit to inadmissible exactions in respect to port charges, demurrage, and commissions.

In a reply to Mr. Benson, written on the 15th of October, 1853, Mr. Marcy says:

"As the names of all those vessels (Golden Era, J. W. Paige, J. Q. Adams, Sarah Chase, and Arcole) appear in the list of those which were embraced in the agreement of the 17th of November last, as furnished by Mr. J. J. De Osma, then minister of Peru, this department will feel called upon to exert itself to secure to *all* the vessels embraced

in the settlement of November the twenty dollars per ton freight therein guarantied ; and, when requested to interpose for this object by the charterers of any vessels included in that adjustment, a proper representation will be made to the Peruvian *chargé d'affaires* near this government.

"This department, however, is in possession of a private agreement entered into between yourself and the Barrera Brothers on the 8th of January last. As that agreement is not recognized by the government of the United States, any violation of its terms by either party must be adjusted by arbitration or legal proceedings."

On the 23d of November, 1853, Mr. Marcy forwarded to Mr. Clay a series of papers submitted by Mr. Benson to establish a claim upon the Peruvian government. Mr. Marcy added :

"Your knowledge of the complications involved in these transactions, and, indeed, of the whole case from its inception to this moment, are considerations which have induced the reference of this claim to your management.

"The department cannot, with the information it possesses, express an intelligent opinion upon the justice of Mr. Benson's claims. The government of the United States looks to Peru for the faithful fulfilment of the agreement of November ; that agreement was explicit and decisive, and Mr. Benson is justly entitled to all the advantages conceded by it."

This reference of Mr. Benson's claims to Mr. Clay proved as decisively fortunate for Peru as the preceding reference of Mr. Fillmore's administration to the same quarter for information as to the title to the Lobos islands.

Your committee do not feel called upon to comment upon the letters of Mr. Clay in reference to the claims of Mr. Benson. They contain no argument against those claims, the futility of which has not already been exposed, and there is very much in their tone and temper which, to your committee, appears highly objectionable.

It is sufficient to observe, that Mr. Clay explicitly declared to the Peruvian government that the government of the United States would not concern itself with the reclamations of Mr. Benson ; and that thus left unprotected, he has been overwhelmed with complete ruin.

Upon a review of the whole case, your committee are of the opinion that Mr. Benson is entitled to receive from the United States some adequate measure of redress and indemnification for the actual losses which he suffered in the enterprise of obtaining guano from the Lobos islands, undertaken, as that enterprise unquestionably was, solely in consequence of assurances of protection given by the administration of President Fillmore. The suggestion of justice to him is further fortified by the suggestion of sound policy, that the enterprise of the American merchant should not be crippled by a want of confidence in the disposition of this government to redeem all its pledges in good faith, and in a liberal spirit.

The determination of the precise measure of redress and indemnification due to Mr. Benson presents questions of difficulty, and affords room for latitude and diversities of opinion.

Considering all the circumstances of the case, your committee pro-

pose as the measure of such redress and indemnification that Mr. Benson should receive from the United States what he ought to have received, and has not received, from Peru, under the agreement of November 17, 1852, if his actual losses amounted to so much.

The agreement of November 17, 1852, was secured for his benefit by the government of the United States, as the least it could accept for him, and was so secured in discharge of its admitted obligation to protect him. It is a measure of redress once tendered to him by this government, and may not unfairly be said to be a measure of redress to which this government is pledged and committed, and from the tender of which it certainly ought not to recede, if it shall appear that it does not exceed the amount of his actual losses.

Whatever moneys may be found due and be paid to Mr. Benson, to make good to him the agreement of November 17, 1852, will constitute an incontestible claim by the United States upon Peru.

This is not a case of a claim by Mr. Benson upon Peru, which this government is called upon to prosecute, and in respect to which its duty would be discharged, when it had exhausted all proper appeals to the justice of Peru. Originally, Mr. Benson had no claim upon Peru whatever, the whole expedition to the Lobos islands having been finally decided to be unauthorized and unlawful by the governments entitled to decide that question. Mr. Benson's claim was and is upon his own government, for losses resulting from an enterprise undertaken under assurances of protection subsequently withdrawn. It might have been satisfied if the stipulations obtained from Peru for his benefit had been performed, but remains in its original force to such extent as those stipulations have not been performed or satisfied. If this government was ever under obligations to Mr. Benson, it cannot escape them by substituting, without his consent, the obligations of a third party which he has no power to enforce. The duty of the United States to indemnify Mr. Benson did not originate with the agreement of November 17, 1852, and is not extinguished by that agreement, considered by itself. It can only be extinguished when Mr. Benson actually receives the indemnity to which he is entitled, or has by his own act waived or released that indemnity. Mr. Benson has the right to look to his own government, upon whose protection alone he originally relied. He has never consented to place his interests at the risk of the ability or disposition of Peru to perform its agreements. Nor can the question of the duty of this government be complicated with any subsequent agreement, to which Mr. Benson may have been a party, either with Peru or its agents, except so far as that agreement may be inconsistent with his claim upon his own government, which does not appear, or unless to such extent as he may have received satisfaction, and discharged Peru from its original stipulations with this government.

Believing, however, from all the evidence in the case, that the agreement of November 17, if fairly carried out, will afford Mr. Benson a sufficient remuneration for his losses, the committee have limited the amount to be paid, in any event, to the measure of indemnity provided by that agreement.

In conformity with the forgoing views, your committee report the accompanying bill, and recommend its passage.

Extract from a report made by Mr. Johnson to the State Department.

"Mr. Osma, by the first article of this stipulation, agreed to allow freight for the vessels designated in that article at twenty *pesos fuertes* per ton." It is alleged that the term *pesos fuertes* designates a particular kind of currency, its literal meaning being "hard dollars;" pesos dollars, fuertes hard.

Upon reference to the highest existing authority, viz: the Pronouncing Dictionary of Spanish and English Languages, composed from the Spanish dictionary of the Spanish academy, Ferreras and Salva, upon the basis of Loani's edition of Newman and Barretti, by Mario Velasquez de la Cardena, New York, published in octavo by D. Appleton & Co., 1855, we find the seventh definition of the word "Peso" as follows: "Spanish coin dollar, weighing one ounce, piaster price of weight."

The second definition of the word "fuerte" is "coin over weight."

Upon reference to the English dictionary for the Spanish of dollar, we find it as follows:

Espana dollar, Spanish dollar, peso moneda; de hard dollar, peso duro o fuerte; current dollar, peso leucillo.

In the Universal Cambist, by P. Kelly, LL. D., vol. 1, London edition, 1835, page 404, we find as follows:

"Accounts are kept in all the above states in pesos or dollars of eight reals. This peso is an imaginary money of account, but the real is a coin which is divided into halves and quarters called medios and quadillos, and likewise multiplied into double reals called penetas. These moneys are considered the currency of the country, and as they are minted on a standard inferior to the hard dollar, they are estimated three per cent. lower than the coin in law, but in practice the fuerte or hard dollar is sometimes at a premium of 5 to 10 per cent. against corriente or currency. In contracts, however, currency is generally understood to be the legal currency unless some other coin is stipulated for; and in exchange, when current dollars are the money, the rate must be mentioned, which varies from 40 to 50 pence sterling per peso."

In the same work the hard dollar is always used as synonymous with Spanish dollar.

It is apparent, therefore, that the term pesos fuertes does not mean a current dollar, whose value varies in different countries, nor any hard coin bearing the denomination of a dollar, such as the Chilian silver dollar, whose value is ten per cent. less than the dollar of exchange, but designates a particular currency, and this is a Spanish dollar or hard dollar weighing one ounce (of silver) and of full weight.

BROOKLYN, *February 2, 1857.*

Mr. Alfred G. Benson, a merchant of New York, has resided in this city for more than a quarter of a century, during which time he acquired and maintained among his compeers, a high standing as an enterprising, honorable and prosperous merchant, and we think we reflect the opinion of the public at large in stating that he lost his credit and became heavily involved in debts and liabilities, by embarking in a business which he was pre-informed by the Chief Magistrate of the nation was lawful, and in the prosecution of which the naval force of the country was ordered to protect and defend him.

If, for no other reason than that in all future times the citizen should unhesitatingly confide in the promises of government, this one consideration alone would seem to be a sufficient reason for placing Mr. Benson in as good credit and position as he was prior to the year 1852.

GEORGE HALL.
JONATHAN TROTTER.
C. P. SMITH.
CONKLIN BUSH.
SAMUEL S. POWELL.
SAMUEL SMITH.
FRANCIS B. STRYKER.
EDWARD A. LAMBERT.
THOMAS G. TALMAGE.

I do hereby certify that the foregoing are the proper signatures of all the gentlemen now living, who have filled the office of mayor of the city of Brooklyn, including the signature of Henry C. Murphy below.

In testimony whereof, I have hereunto set my hand and affixed the official seal of the City of Brooklyn, this fourth day of February, 1857.

O. FAUROT, *Assistant City Clerk.*

I always understood that Mr. Benson had engaged in the Lobos island business on the strength of assurances from the government, and think that any losses he sustained in consequence of such assurances should be reimbursed him by the government.

HENRY MURPHY.

I concur in the above.

A. H. MICKLE.

Without any personal knowledge of the facts alleged relative to the Lobos claim, I cheerfully bear testimony as to the general character of Mr. Benson, which I believe to be good in this city.

FERNANDO WOOD, *Mayor.*

NEW YORK, *February 4, 1857.*

A true copy:

JAMES S. WYCKOFF.
T. M. BRAINE.



MESSAGE

OF

THE PRESIDENT OF THE UNITED STATES,

IN COMPLIANCE WITH

A resolution of the Senate of February 24, 1855, calling for copies of correspondence relative to the Lobos islands.

MAY 2, 1856.—Ordered to lie on the table; motion to print referred to the Committee on Printing.

MAY 14, 1856.—Reported adversely and agreed to.

MAY 22, 1856.—Referred to the Committee of Claims.

To the Senate of the United States:

I transmit herewith the report of the Secretary of State, with the accompanying documents, in answer to the resolution of the Senate of the 24th February, 1855, in relation to the settlement of the controversy respecting the Lobos islands.

FRANKLIN PIERCE.

WASHINGTON, April 29, 1856.

DEPARTMENT OF STATE,

Washington, March 17, 1856.

SIR: I have the honor to acknowledge the receipt of your letter of the 14th instant, with its enclosures, relating to the claim of Alfred G. Benson, and requesting to be furnished with such information as will enable the committee to form a just conclusion upon the merits of Mr. Benson's claim.

In reply to your request, I have to acquaint you that, in compliance with a resolution of the Senate of the 24th February, 1855, this department has been engaged in the preparation of a report, which will contain "copies of all documents on record or on file in relation to the settlement of the controversy in regard to the Lobos islands." This report will, consequently, embrace the information solicited in your letter. Owing to the large mass of documents which, according to the scope of the resolution, had to be transcribed, and of the papers in the Spanish language requiring translation, it has been quite impracticable to answer the call with that promptness which the depart-

ment would have wished. Every effort will, however, be made to place the documents before the Senate at the earliest possible moment.

I have the honor to be, sir, your obedient servant,

W. L. MARCY.

Hon. RICHARD BRODHEAD,

Chairman of the Senate Committee on Claims.

P. S.—The documents transmitted with your letter are herewith returned.

DEPARTMENT OF STATE,

Washington, April 29, 1856.

The Secretary of State, to whom was referred the resolution of the Senate of the 24th February, 1855, requesting the President, "if compatible with the public interest, to communicate to the Senate copies of all documents on record or on file in relation to the settlement of the controversy in regard to the Lobos islands, and without which, as is stated by the Secretary of State, 'it is apprehended the subject cannot be properly understood,'" has the honor to lay before the President the documents mentioned in the subjoined list.

Respectfully submitted.

W. L. MARCY.

The PRESIDENT.

List of papers accompanying the report of the Secretary of State to the President, of April , 1856.

- Mr. De Osma to Mr. Webster, translation, June 25, 1852.
- Same to the same, translation, July 3, 1852.
- Same to the same, translation, August 9, 1852.
- Mr. Webster to Mr. Osma, August 21, 1852.
- Mr. Clay to Mr. Webster, extract and enclosures, August 7, 1852.
- Same to the same, extract and enclosure, August 25, 1852.
- Mr. Webster to Mr. Clay, August 30, 1852.
- Mr. Conrad to Mr. Clay, September 21, 1852.
- Same to the same, September 21, 1852.
- Same to the same, October 1, 1852.
- Mr. Clay to Mr. Webster, enclosures, September 25, 1852.
- Mr. J. J. de Osma to the Secretary of State, translation, October 7, 1852.
- Mr. Conrad to Mr. J. J. de Osma, October 9, 1852.
- Mr. Clay to Mr. Webster, enclosures, October 11, 1852.
- Same to the same, October 12, 1852.
- Same to the same, enclosures, October 19, 1852.
- Same to the same, enclosures, October 25, 1852.
- Same to the same, enclosures, November 11, 1852.

Same to the same, November 11, 1852.
Mr. Everett to Mr. J. J. de Osma, November 16, 1852.
Mr. J. J. de Osma to Mr. Everett, translation, November 17, 1852.
Mr. Everett to Mr. Clay, November 18, 1852.
Same to the same, November 23, 1852.
Mr. Clay to Mr. Everett, enclosures, December 21, 1852.
Mr. Everett to Mr. Osma, enclosure, December 1, 1852.
Mr. Clay to Mr. Everett, January 24, 1853.
Mr. Everett to Mr. Clay, February 9, 1853.
Mr. Clay to Mr. Everett, enclosure, February 25, 1853.
Same to the same, enclosure, March 25, 1853.
Same to the same, March 25, 1853.
Same to the Secretary of State, enclosures, April 11, 1853.
Same to Mr. Marcy, enclosures, May 20, 1853.
Mr. Marcy to Mr. Clay, November 23, 1853.
Mr. Clay to Mr. Marcy, enclosures, June 1, 1854.
Mr. Hunter to Mr. Clay, extract, August 26, 1854.
Mr. Clay to Mr. Marcy, extract, October 24, 1854.
Captain Jewett to the Secretary of State, enclosures, August 16, 1852.
Mr. Kennedy to Mr. Webster, August 25, 1852.
Captain Jewett to President Fillmore, September 10, 1852.
Mr. Conrad to Captain Jewett, September 18, 1852.
Same to Messrs. Magoun & Son, September 21, 1852.
Captain Jewett to Mr. Conrad, September 22, 1852.
Messrs. Dana & Co. to President Fillmore, September 23, 1852.
Messrs. Magoun & Son to Mr. Conrad, September 24, 1852.
Mr. Conrad to Messrs. Dana & Co., September 25, 1852.
Messrs. Dana & Co. to Mr. Webster, October 1, 1852.
Same to Mr. Conrad, October 2, 1852.
Messrs. Magoun & Son to Mr. Conrad, enclosure, October 7, 1852.
Same to Mr. Everett, November 11, 1852.
Mr. Everett to Dana & Co., November 19, 1852.
Mr. Benson to Mr. Everett, November 27, 1852.
Mr. Everett to Messrs. Dana & Co., December 10, 1852.
Same to Mr. Benson, December 10, 1852.
Messrs. Magoun & Son to Mr. Everett, December 11, 1852.
Mr. Everett to Messrs. Magoun & Son, December 21, 1852.
Same to Mr. Benson, February 9, 1853.
Mr. Benson to Mr. Everett, enclosures, March 2, 1853.
Same to Mr. Marcy, enclosures, April 26, 1853.
Mr. Marcy to Mr. Benson, May 3, 1853.
Mr. Prime to Mr. Marcy, July 11, 1853.
Mr. Benson to the same, October 5, 1853.
Mr. Marcy to Mr. Benson, October 15, 1853.
Mr. Benson to Mr. Marcy, enclosures, October 18, 1853.
Same to the Secretary of State, enclosures, November 15, 1853.
Same to Mr. Mann, November 22, 1853.
Same to Mr. Marcy, March 9, 1854.
Mr. Marcy to Mr. Benson, March 15, 1854.
Mr. Benson to Mr. Marcy, December 9, 1854.
Mr. Marcy to Mr. Benson, December 15, 1854.

Captain Jewett to Mr. Marcy, enclosure, March 20, 1855.

Messrs. Dana & Co. to Mr. Marcy, April 6, 1855.

Mr. Marcy to Messrs. Dana & Co., April 13, 1855.

Mr. Benson to Mr. Marcy, enclosures, April 6, 1855.

F. Barreda to the same, enclosures, April 24, 1855.

Mr. Marcy to Mr. Benson, April 27, 1855.

Mr. De Osma to Mr. Webster.

[Translation.]

WASHINGTON, June 25, 1852.

SIR: Much has been said in the English newspapers in relation to the islands of Lobos, which contain some deposits of guano, and which, it is supposed, have been lately discovered, for the purpose of inducing the government of that nation to send one or more vessels of war to protect those who may go to those islands to fetch guano; the English government, however, duly respecting the authority which the government of Peru has always exercised over the aforesaid islands of Lobos, has refused to encourage the pretensions of those speculators that have started this matter, declining thus to afford any protection to a clandestine traffic in property belonging to Peru.

Unfortunately, this question has found sympathizers among some adventurers in this country; and although it is true that the intervention of the government in regard to it has not been solicited, at least not openly, as was the case in England, a much more serious and reprehensible turn has been given to the affair, because, without alleging any reasons, or pleading the existence of any right whatever, vessels have been secretly freighted with a view of exporting guano from Lobos.

A knowledge of these facts, obtained from a private source, did not allow me to have the honor of communicating them to your excellency, and of asking, in the name of my government, for the adoption of such measures as might be best calculated to avoid the evils which would necessarily follow from such a course; but when I read in the public newspapers of New York and Baltimore, "that the government of the United States has sent instructions to the American squadron in the Pacific to cruise in the vicinity of the islands of Lobos, and to protect those American vessels that may go there to fetch guano," and when these very papers even contain propositions for freighting vessels, at any price whatever, for the purpose of fetching Peruvian guano, "relying upon the fullest and most certain protection of the government of the United States," I think I am sufficiently justified, as well as most imperatively called upon, to call your excellency's attention to this matter.

The islands of Lobos—both the inner and outer—(Lobos de Tierra y Lobos de Fuera,) contain certain amounts of guano, although vastly less in quantity than is pretended, and belong at present to Peru, &

they formerly belonged to Spain, when that power ruled in those regions; it so happening that each section of Spanish America has become possessed of that portion of territory, which corresponds to its latitude and longitude. With regard to the islands of Lobos, it happens, accidentally, that the one denominated *Lobos de Fuera*, although situated at a greater distance from our coast than the one styled *Lobos de Tierra*, occupies a less westerly longitude. Both islands can easily be seen by any vessel sailing through the intervening space; a point usually steered for by almost every vessel that is engaged in the coasting trade in that part of the coast of Peru, and even by foreign vessels sailing to and from Callao to Payta and Guayaquil.

For these simple reasons your excellency will easily understand that the islands of Lobos, which are nothing more than barren rocks, now of some importance on account of the guano they contain, must have been known to navigators from the time that Pizarro conquered the empire of the Incas, and that it is very strange, therefore, that any attempt should be made to attribute their discovery to a recent date.

We have occupied and made use of the islands *de Lobos de Tierra* and *Lobos de Fuera* because we have always considered, and do now consider them, as being *bona fide* ours. From times immemorial, the Peruvian Indians have been in the habit of frequenting those shores for the purpose of fishing for seals, killing birds, and gathering eggs, carrying off in their canoes large quantities of these objects to the city of Lambayique and other points on the coast. There they have had their huts and other small habitations erected—this habit having become so inveterate with them, that, notwithstanding the prohibitory regulations and decrees issued by the government for more than ten years, in order that the birds which produced the guano might not be destroyed and scared away, even at this day, the fishermen will not desist from visiting those localities, where neither foreign vessels can go to fetch guano for exportation, nor national vessels for home consumption. Under this view of the case, we occupy and make use of the islands of *Lobos de Tierra* and *Lobos de Fuera*.

Since the government of Peru became aware that guano had become an article of exportation, it sought to ascertain the quantity which might probably exist at the various deposits, with a view of allaying the clamors of national agriculturists, by whom the carrying off of a manure so indispensable to the agriculture of the country, would probably be looked upon in an unfavorable light. To this effect, Don Francisco de Rivero was commissioned to examine and take a measurement of these deposits, an account of whose observations was published in the year 1844 or 1845, in which the islands of *Lobos de Tierra* and *Lobos de Fuera* are mentioned as forming part of our deposits at the northward, which are much less considerable than those of the south and of Chincha. The Engineer, Don Edward Carter, was shortly after sent by my government, who examined and made a measurement of the small islands of Guanape, Malabrigo, Santa Terror, San Martin, Marzaque, El Pelado, Las Pescadoras, the Hormigas islands, and, lastly, the islands of *Lobos de Tierra*, (which comprise the principal islands) La Punta, Corcobado, the island Bermeja,

the island Felix Gonzalez, La Colorada, as well as the island of *Lobo de Fuera*. The inspection of these islands has shown, as it is proved in the topographical plans, that there is only a small portion of those localities which, in consequence of its being more sheltered from the winds, contains any deposits of guano.

I have given your excellency this information, because I am desirous, that, by affording all possible means of becoming acquainted with the subject, we may be spared the evils which will undoubtedly follow if the adventurers carry out their project of invading our deposits of guano on the erroneous supposition that *Lobos* is common property; that they are protected by their government; and that they cannot incur the penalty to which they are subjected by the laws of Peru on the subject.

As a warning to ship-owners and other merchants, who, in good faith, might become compromised in this traffic, I have caused the notification which accompanies this note to be published; but, as I cannot hope, after seeing the notices which the newspapers have circulated, that the government of your excellency will protect this enterprise with its own vessels of war, that my notification will produce any effect, but that this matter will assume a very serious character, I feel myself compelled to ask, in the name of my government, that your excellency will adopt such measures as, in the opinion of the government of the United States, and agreeably with the good and friendly relations which exist between the two countries, may be most calculated to prevent that, under a false impression, our laws should be violated and use made of those islands which have always been in our possession, and the ownership of which by us has never, until this day, been called into question by any nation.

I beg that your excellency will be pleased to admit the object and the explanations of this note with that impartiality for which you are distinguished, and to accept the assurances of that high consideration with which I am, Mr. Secretary of State, your excellency's very devoted and obedient servant,

JUAN Y DE OSMÁ.

The most excellent SECRETARY OF STATE,
Of the United States.

Mr. De Osma to Mr. Webster.

[Translation.]

WASHINGTON, July 3, 1852.

SIR: In the interview which your excellency conceded me yesterday, when I called at the State Department with the object of requesting an answer to the note I had the honor of addressing your excellency of the 25th of last month, claiming your attention to the preparations that were being made to attack the *Lobos* islands, the property of Peru, your excellency made me the following declaration: "That the governme:

of the United States does not recognize in Peru any exclusive right to the said islands of Lobos; that she considers them as desert islands, which had been discovered by Captain Morrell, of the American merchant service, and that consequently the government of the United States will protect all her subjects who might go to those islands for the purpose of taking the guano they contain."

As this declaration of your excellency is contrary to the right and possession which Peru has alway held over the Lobos islands, a right not contested as yet by any nation, I comply with the duty which my official character imposes upon me, begging your excellency to make this declaration by writing, and also requesting an answer to the note upon so serious a subject which I had the honor of addressing your excellency on the 25th of last month.

I am, sir, with the highest consideration and respect, your very obedient servant,

JUAN Y DE OSMÁ.

Mr. Osma to Mr. Webster.

[Translation.]

NEW YORK, *August 9, 1852.*

SIR: Allow me once more to address your excellency in opposition to the assistance which the government of the United States gives to those persons who have undertaken to seize on the Islands of Lobos, pertaining to the jurisdiction of the provinces of Lambayeque and Chiclayo, and belonging to the republic of Peru.

Bound by duty and patriotism to place in a clear light the right of Peru to these islands, in order to avoid that, under erroneous suppositions, this undertaking should obtain protection; when, if examined in view of its legality, it cannot otherwise appear than what it really is, a clear violation of the most sound principles of international law; I have addressed your excellency repeatedly since the month of June, and presented to you documents which sufficiently prove, and in the most incontestible manner, the rights and the sovereignty which Peru exercises and has always exercised over the aforementioned islands of Lobos. These documents leave no ground on which, with a semblance of legality, the title of Peru to the proprietorship of said islands can be questioned.

My communications (without any ability on my part to suspect any reason therefor) have not obtained any reply; consequently the silence of your excellency holds me in ignorance of the reasons which have moved the government of the United States to lend its protection to the company formed in New York for the object of exploring the islands of Lobos, without consideration of the great offence thereby inflicted on a people apparently so bound in the chain of sincere friendship, as also by solemn treaties.

It is true that in a conference which I had with your excellency on

this business on the 2d of July last, your excellency remarked to me, that in not recognizing the exclusive right of Peru to the islands of Lobos, and the consequent protection of American vessels who might proceed thither to load guano, the government of the United States rested on the fact of their discovery by Captain Morrell, of the American merchant service. I then observed to you, that the islands of Lobos belonged to Peru ever since she was constituted an independent state, as they had previously belonged to Spain, who had sovereignty in that part of the world. Your excellency immediately replied, and in a very emphatic manner, denying that they had ever belonged to Peru or to Spain.

In this state of the case, and even supposing that your excellency perhaps might refer to other islands of Lobos recently discovered, and not to those which in letters and other old papers are found marked and described as belonging to the corregidorship of Saña in the viceroyalty of Peru, I directed a note to your excellency on the 3d of July in which, repeating your excellency's assertion, I asked you to reduce it to writing. I did believe that by that mode I might have my doubts cleared up, and that I might obtain thereby a full discussion of the question, such as its importance appeared to demand; the silence of your excellency, however, completely frustrated the objects had in view when I penned the note.

Although I have them not at hand, the dictionary of Alcedo and other works, like the History of America, by John Ogilby, cosmographer to the king of England, published in 1671, prove the ancient existence of the islands of Lobos, and that they were a part of Peru; the known and learned erudition of your excellency will excuse me when I deny their discovery, which neither Captain Morrell himself pretended nor could pretend to attribute to himself.

The supposition that Captain Morrell discovered the islands of Lobos is altogether inadmissible and destitute of any foundation; and if it had not been that I heard your excellency make use of it, such conception would never have received from me the honor of a remark in a note addressed to your excellency.

The English government, much more interested than that of the United States in the acquisition of guano, when the Agricultural Society, as also that of shipowners of Great Britain, urged it to declare the islands of Lobos common property, or a dependency of England, found nothing in the title by which Peru holds said islands which could create a doubt to dispute it; and it has declared, as it had done years ago, that the said islands, being the property of a nation, it could not violate international laws for the benefit of it, England's agriculture, and that consequently it would not give its protection to those who on said islands should violate the territory and laws of Peru. In the United States, no application has been made publicly to Congress or to the government, asking protection with the object of free traffic in property exclusively belonging to *another nation*. There has been evinced, (with pleasure I remark it,) on the part of agriculturists and shipowners here a greater respect for the rights of others than was shown by the same class in England. Nevertheless the question has been given here a very different character, and one of

the most grave importance; for at the solicitation of a few persons desirous of making a good speculation, the government of your excellency has thought proper to afford its protection to their enterprise, and has determined thus without considering that in so doing it attacks the proprietorship of a people whose relative weakness it seems should have made it more worthy of having its claims attended to, and its rights respected.

Although the Peruvian guano has but very recently been introduced into this country, it has, on several occasions, attracted the marked attention of the government of the United States. The predecessor of your excellency, Mr. Clayton, one of the persons who labored most to procure the importation of this article at a very low price, or for nothing, carried on, more than two years ago, an official correspondence with this legation, the object of which was to induce Peru to sell the guano in its islands; for, says Mr. Clayton, the consumption thereof will be augmented and the utility will be greater for Peru.

The President of the United States, in his message to Congress in 1850, dedicated a paragraph to the subject of Peruvian guano, stating how very important it had become to the agriculture of the country, and the necessity imposed on the Executive to obtain by all possible means from Peru that the traffic in it might be permitted on more liberal terms.

I have quoted the above not with the view to condemn, for I recognize and respect the right which the United States have, in common with all nations, to negotiate and use all its influence to obtain whatever may subserve its interests; but rather to show to your excellency that neither your predecessor nor the most worthy President doubted for a moment that Peru was the rightful owner of the islands of Lobos. From time immemorial these islands have existed, and contained guano exactly as they are at the present moment; they have always been known, marked on the maps, and referred to in various works as Peruvian; they have been the subject of an express prohibition for the last twenty years, a prohibition which has been recognized and respected, either explicitly or tacitly, by all nations.

It would be useless and foreign to the intention of this note to go into the narration of the different acts of sovereignty which Peru has exercised over the islands of Lobos, with all of which I have reason to believe your excellency is perfectly acquainted. If the rights of Peru were not so incontestably established; if it were not as plain and evident as the title of the United States to Governor's Island, I should have limited myself to merely asking of your excellency the instrument on which the government of the United States bases itself to call them in question, or in other words, the reasons for which it, the government of the United States, has erected its refusal to recognize the rights of Peru; since in this business no discussion whatever has preceded the action of the United States, notwithstanding all I have done to excite one.

The preparations now in progress to extract guano from the islands of Lobos, a considerable number of vessels, men, and tools having been dispatched for that purpose; the protection of the government

of the United States counted on for this violation of our rights and our laws; the conclusion is forced upon me that occurrences of a very serious character will soon happen in those islands; Peru, relying on her right and her laws, is prepared to resist so unjustifiable an aggression, without paying any consideration to the superiority of material force upon which the authors of it calculate.

In this situation, and without ever even having obtained a hearing for my repeated reclamations, in the name of my country, I protest before your excellency against the conduct of the government of the United States in relation to the islands of Lobos, and I protest against any assistance or protection which it may have afforded, or is disposed to give to those persons who may go to said islands for the purpose of extracting guano, or for any other purpose, in violation to the laws which in Peru prohibit them, as an attack on the sovereignty of Peru, and as an act of unjustifiable hostility against said republic.

I had hoped to have in person presented this note to your excellency, but my health not allowing me to return at present to Washington, and considering that some time since I should have protested against the business which has called for it, I have judged it proper to address it to your excellency immediately on being acquainted with your return to the capital.

I have the honor of renewing to your excellency the assurances of my high consideration and respect.

JUAN Y. DE OSMÁ.

Mr. Webster to Mr. Osma.

DEPARTMENT OF STATE,
Washington, August 21, 1852.

The undersigned, Secretary of State of the United States, has the honor to acknowledge the receipt of the several communications of Mr Osma, chargé d'affaires of Peru, of the 25th of June, 3d of July, and 9th instant. The first mentioned of these communications, however, did not come to his knowledge until the 6th of July, after he had left Washington for a short absence. He very much regrets that circumstances have prevented an earlier answer to these several communications; but, as they all relate to the same subject, all will now receive a common reply.

In the first place, the undersigned will remark to Mr. Osma that the government of the United States has not now, nor ever has had, any intention to facilitate the particular purposes of any persons, such as Mr. Osma calls speculators, further than those purposes are conformable to public law, as well as to the laws of the United States. This government knows of no companies, no associations, and no individuals in whose behalf it undertakes any special protection. The question is a general one, in which all the citizens of the United States engaged in commerce have an interest, and that interest is equally respected by the United States, regardless of individuals.

In the next place, the undersigned expresses the hope that it was not Mr. Osma's purpose, by any expression in his note of the 9th instant, to convey any intimation that the proceedings of this government in regard to the subject have been influenced in the slightest degree by any conviction of the relative strength or weakness of the parties. Such an intimation, if intended to be made, would require no refutation, since all the world knows the manner in which the republics of South America, formed out of the ancient possessions of Spain have been treated by this government from their earliest origin to the present day.

The undersigned will make a further remark, to prevent mistake and misunderstanding, upon Mr. Osma's observation upon the conversation between him and the undersigned, in the Department of State, on the 2d of July ; and that is, that the supposed discovery of Captain Morrell, mentioned in that conversation, was not relied upon by the undersigned as founding an exclusive right to the Lobos islands on the part of the United States. It was only mentioned as a fact fit to be considered in common with other facts and occurrences. The truth appears to be that Captain Morrell was on a voyage of discovery, and did, in fact, discover, or was supposed to have discovered, guano on these islands.

It is certain that no book generally known and circulated in this country mentioned the fact of the existence of guano on these islands until Captain Morrell's narrative was published, in 1832.

After these preliminary remarks, the undersigned now proceeds to the consideration of the main subject. In his several communications Mr. Osma asserts the right of Peru to all the Lobos islands, on the ground that she has always exercised authority over them ; that they belong to Peru, as they formerly belonged to Spain ; and that from time immemorial the Peruvian Indians have been in the habit of visiting them for the purpose of catching seals, killing birds, and gathering eggs, and that this exclusive right to the islands by Peru has never been doubted or disputed.

The question is, are these unqualified declarations of Mr. Osma strictly accurate? The Lobos, or seal islands, as their name imports, lie in the open Pacific ocean, the nearest of them twenty or thirty miles from the coast of Peru. They are, as Mr. Osma admits, mere barren rocks in the sea, uninhabited and uninhabitable. Fisheries, and the pursuit of amphibious animals, especially the seal, have long been carried on around their shores, and even on those shores themselves, since it is well known that seals are usually taken and killed upon the land. In these pursuits, and in this use of the islands, citizens of the United States were engaged for half a century before any actual interruption took place by the Peruvian government, or anybody else ; their visits to them having commenced at least as early as 1793. All this is well known to the commercial world. Now it is quite certain that if Peru held and possessed full sovereignty over these islands, this fishing near the shore, and this pursuit and killing of amphibious animals upon the land, was as much an invasion of that sovereignty as is the taking of guano from them now. Nor was the case so unimportant as that Peru might have regarded this use

of the islands by citizens of the United States as an indulgence merely, supposing her to possess the exclusive right, since the pursuit and destruction of seals, which have at last terminated in their almost entire disappearance, must have been a matter of much importance to her government. Nevertheless, no complaint was made of this course of things, nor any interruption attempted or threatened until September, 1833, in which month, as it would now appear, a decree was issued by the Peruvian government prohibiting foreigners from fishing for seals and amphibious animals on the shores and islands of Peru, and declaring that the captains of foreign vessels who evaded the order should be considered as smugglers. It is important to observe that this decree was issued after the publication of Captain Morrell's narrative.

This decree was sudden and unexpected, and therefore the chargé d'affaires of the United States at Lima was under the necessity of acting upon it without orders from his own government. He immediately addressed a note on the subject to the minister of foreign relations of Peru, in which, without formally denying the original right of Peru, he requested a reconsideration of the decree, or that it might be so far modified as to permit to the citizens of the United States the pursuit of an occupation which they had been allowed quietly to follow for a number of years, and adding that the decree could not but be regarded as unfriendly to the government of the United States. So far as is known to the undersigned, no answer or reply was ever made to this remonstrance, and it is certain that the citizens of the United States continued to pursue their usual avocations without interruption, notwithstanding this decree. If such an interruption had been made by the Peruvian authorities, it would at once have brought the question of the sovereignty of Peru over the Lobos islands to the attention of this government, as happened a few years before in the case of the right of the government of the Argentine Confederation to claim sovereignty over the Falkland islands. It is true that the decree of 1833 makes no particular mention of the Lobos islands, but it is directed generally against fishing on the coasts and islands of Peru. Nevertheless, this cannot be regarded as affecting the general right of citizens of the United States founded on long and undisputed usage. Here, then, is a formal remonstrance, on the part of the United States, against the asserted sovereignty of Peru over the Lobos islands, to which no answer, so far as it appears, was given, nor any intimation made that, notwithstanding this remonstrance, the decree would be enforced. It is quite evident that, although the decree is general in its terms, it was intended to be levelled especially against citizens of the United States, as the subjects of other countries did not partake, to any considerable extent, in the fisheries which were prohibited. Can Mr. Osma's averment therefore be maintained, in which he asserts the universal and absolute sovereignty of Peru never to have been denied, or questioned, by any government? And if Peru has suffered these barren rocks to be visited and used by citizens of the United States for a long course of time, and for all the purposes for which they were known to be valuable, is the case altered when they are found capable of a new use? Is not the natural inference either that

Peru never claimed any exclusive right over the islands, or that, if such claim had been made by any formal or official act of the government, such claim had been abandoned, at least, so far as citizens of the United States were concerned.

Mr. Osma refers to a decision of the English government, and observes that, as both the mercantile and agricultural classes in the British empire have a strong interest adverse to the claim of Peru, if the British government has decided in favor of that claim, that decision must be ascribed to considerations sufficient to outweigh a regard for the interests of British farmers and shipowners. But the two cases may justly be considered as essentially different. When the decree of 1833 appeared, Mr. Wilson, the British consul general at Lima, in a communication to his government, said: "For many years no British vessel has been engaged in this fishery, but great abuses have been committed by American vessels;" and the year afterwards, writing upon the subject of the seizure of the British schooner *Campeadora* for killing seals at the Lobos islands, he admitted the right of Peru to those islands. At the same time, he adds: "Lord James Townshend, the commander of his Majesty's naval forces in the Pacific, takes a different view of the question; and he himself told me that he considered that his Majesty's subjects had a positive right of fishery on all these islands, unless they should be actually occupied by some Peruvian authority, or protected by the constant presence of some Peruvian man-of-war to warn off vessels."

It will be borne in mind that when the case of the *Campeadora* occurred the use, and perhaps even the value, of guano as a manure was unknown in England. Before that case was decided, however, the British government may be said to have been irrevocably committed to an acknowledgment of the right of Peru to the Lobos islands, by their acquiescence in the opinion expressed by Mr. Wilson, their diplomatic agent, and the answer to that communication from the foreign office; for in that answer, under date 30th August, 1834, Lord Palmerston said: "It would therefore appear that the Peruvian government have a right to prohibit foreign vessels from fishing upon the coasts immediately adjoining to those islands as well as upon the coasts of Peru itself, there being no evidence in the papers which you have transmitted of any right of fishing acquired by long and uninterrupted usage."

It is clear, therefore, that the British government yielded the point precisely, because it had no such ground to stand on, in behalf of its own subjects, as the government of the United States does possess, and may well stand on, in behalf of its own citizens. And it may be regarded as a question still open in England down to last year; for, on the 10th of May of that year, Lord Stanley, under secretary of state for foreign affairs, in answer to a letter from Mr. Wentworth Butler, says: "I am to state to you in reply, whether the islands of Lobos Afuera, and Lobos de Tierra belong of right to Peru, or are claimed by Peru as dependencies. His lordship does not find in the Peruvian constitution, published after Peru had separated itself from Spain, any mention of those islands as being dependencies of Peru;

but it appears to Lord Palmerston that their proximity to Peru would give to that state a *prima facie* claim to them."

Now, it is certain that the fact does not, under the rule of public law, bear out this last observation of Lord Palmerston, because the distance from the shore of all these islands is five or six times greater than the three marine miles extend. It may be here added, that it is well understood that a powerful class of British subjects, distinct from those of merchants and farmers, has a vital interest in maintaining the regulations for the export of guano from Peru upon their present footing. It may not be entirely satisfactory, therefore, to take the case of the *Campeadora*, or that of the *Hibernia*, which afterwards occurred, alone into consideration, in endeavoring to account for the policy which the British government has thought proper to adopt in regard to this subject. However this may be, it is quite clear that the English case and the American case are quite different, for the reasons already stated. As has been shown, the representative of the American government in Peru remonstrated against the issuing of the decree of 1833. And it is a consideration of very great weight in this case, that the main object of that decree, as it fully appears, was to drive off from the coasts and islands of Peru, including, of course, those of Lobos, the fishing vessels of the United States. Now, if such were the sole or principal object of the decree, and the agent of the United States formally remonstrated against that decree, how is the subsequent conduct of Peru and her entire silence to be reconciled with the idea that she really supposed herself possessed of absolute sovereignty over those islands? She certainly made no attempt to enforce that decree against vessels or citizens of the United States, but suffered things to go on as they had gone on through a long course of years.

The undersigned has thus far spoken of the actual facts and continued usage, which he supposes to belong to the just consideration of this case.

Mr. Osma, in his recent communication, refers to the authority of Alcedo to prove that those islands are within the sovereignty of Peru, and have always been so considered.

In the decision of a question purely geographical, relating to any part of the American hemisphere, and especially to that formerly under the dominion of Spain, the undersigned acknowledges that Alcedo is entitled to almost implicit confidence; but in the passages to which Mr. Osma refers he was speaking merely geographically. He was not discussing any question of right founded either on discovery or usage, or any other political consideration; and if, as Mr. Osman says, that great geographer, in speaking of the Lobos islands, uses words plainly, or by implication, assigning to Spain the sovereignty over those islands, this may be ascribed to his loyalty as a Spanish subject and an officer in the king's service; a sentiment which would not allow him to entertain a doubt of the right of his sovereign to any regions which he might claim by whatever title. Alcedo, therefore, describes the Lobos islands as belonging to the coast and to a particular province of Peru. The fact that they are islands, however, leaves the question open as to the distance between them and the coast

of Peru, and he seems to have taken it for granted, that because they happened to be nearest to the province of Saña, they were necessarily included within the limits of that province ; a proposition which cannot be supported.

In this case, therefore, the authority of Alcedo cannot be regarded as decisive. In order that it should be so considered, the undersigned must be informed what act of jurisdiction his Catholic Majesty exercised over these islands. The occasional visits of Indians from the neighboring continent, to which Mr. Osma refers, cannot be said to have imparted to the sovereign of Spain or the government of Peru even, as good a title to those islands as the habitual resort thither of the vessels of the United States, so long and uninterruptedly continued, for the purpose of capturing seals on their shores and whales in the adjacent ocean, would give to the United States. The use of these islands by the Peruvian Indians for the last half century has no doubt been vastly less than by the citizens of the United States ; and, upon the ground of Mr. Osma's argument, a better title could be asserted by possession on the part of the United States than could be maintained by Peru.

The undersigned freely admits that acts of the Peruvian government, founded on supposed rights, when not objected to, are fit to be regarded as having more or less weight on the question of right, so far as that right depends upon possession. If, therefore, it be asked, why this government did not also protest against the Peruvian decrees of the 21st March and 10th of May, 1842, by the 15th article of the former and the 3d of the latter, of which the penalty of confiscation is denounced against any national or foreign vessel which shall anchor at or approach the islands, or places in which there may be guano, without the usual license from the authorities empowered to issue the same, it may be answered, that the very existence of those decrees was not known to this government until they appeared in the British parliamentary documents on the subject of the Lobos islands, presented to the House of Commons on the 14th of May last. There is nothing which the undersigned can find in the despatches of the chargé d'affaires of the United States at Lima to show that the decrees were communicated to or known to him. If these decrees had been known here at an earlier date they would have received the attention of this government.

As to the claim of Peru to those islands, founded on the law of proximity, the question will appear to be free of doubt. The well settled rule of modern public law on this point is, that the right of jurisdiction of any nation whose territories may border on the sea extends to the distance of a cannon-shot, or three marine miles from the shore, this being the supposed limit to which a defence of the coast from the land itself can be extended.

The whole discussion, therefore, must turn upon this, viz: the Lobos islands lying in the open ocean, so far from any continental possessions of Peru as not to belong to that country by the law of proximity or adjacent position, has the government of that country exercised such unequivocal acts of absolute sovereignty and ownership over them as give to her a right to their exclusive possession, as

against the United States and their citizens, by the law of indisputable possession? And the undersigned repeats that this is not a question between Peru and other governments who may have more or less distinctly admitted her right, but it is a question between Peru and the United States, who have so long exercised that right and remonstrated against its interruption.

The government of the United States, however, is prepared to give due consideration to all facts tending to show possession or occupancy of the Lobos islands by Peru, and is not inclined to stop or preclude discussion until the whole matter shall be thoroughly investigated. If there are any facts or arguments which have not been brought to its consideration they shall receive the most respectful and friendly attention. If it shall turn out that, as has been intimated above, those islands are uninhabited and uninhabitable, and therefore incapable of being legally possessed or held by any one nation, they and their contents must be considered as the common property of all; or, if unprotected by the presence of Peruvian authorities and without actual possession, their use has been by Peru abandoned or conceded, without limitation of time, to citizens of the United States for a long period, or yielded in consequence of the remonstrance of this government or its agents, then no exclusive ownership can be pretended as against the United States at least.

Under all the circumstances, the President thinks it most advisable that full instructions on this subject should be despatched to the chargé d'affaires of the United States at Lima, and that proper orders should be given to the naval forces of the United States in that quarter to prevent collision until further examination of the case. No countenance will be given to the authors of such enterprises, claiming to be citizens of the United States, who may undertake to defend themselves or their vessels by force, in the prosecution of any commercial enterprises to those islands. Such acts would be acts of private war, and their authors would thereby justly forfeit the protection of their own government.

The undersigned avails himself of this occasion to offer to Mr. Osma a renewed assurance of his very high consideration,

DANIEL WEBSTER.

Señor Don JUAN DE OSMA, &c., &c., &c.

Mr. Clay to Mr. Webster.

[Extract.]

[No. 105.]

LEGATION OF THE UNITED STATES,
Lima, August 7, 1852.

SIR: On the 31st ultimo I received an invitation from the minister of foreign affairs to call at his department. Upon going there he informed me that he had received a despatch from the Peruvian chargé d'affaires at Washington, stating that several vessels were being fitted out in the ports of the United States to load with guano at the Lobos islands; that notwithstanding public warning, given by the agents

for the sale of the article in the United States, that those islands were closed to foreign commerce, and the trade in guano prohibited to vessels of all nations unless expressly chartered for it by the agents of the Peruvian government, an advertisement had appeared in the papers, signed by R. W. Trundy, of New York, and J. H. Cheney & Co., of Boston, offering to charter vessels, upon the most favorable terms, to load at the Lobos islands, and stating that "parties chartering from them could have the assurance of the government of the United States of full and complete protection;" that, upon the publication of the advertisement, the chargé d'affaires brought the subject to your notice, and asked whether it was true that the government of the United States intended to give protection to the vessels chartered to trade in guano with the Lobos islands; that you had replied to him in the affirmative, adding that the United States claimed the right to the trade on the ground of prior discovery, founded upon a visit made to the islands by Captain Morrell, an American citizen, who described them in a book published by him in 1832; that, in continuation, the Peruvian chargé d'affaires had informed you that the Lobos islands belonged unquestionably to his government, which had always exercised jurisdiction over them, and that he then offered to lay before you irrefutable proof that the title to those islands was vested in the Peruvian nation. You then replied to him that the vessels would go to the Losbos islands, and orders would be sent to the commodore in the Pacific to protect them whilst loading with guano, and that if it should afterwards appear that they belonged to Peru the United States would pay for the guano thus taken away; that, after this conversation, he had addressed a note to you upon the subject, to which he had not received an answer; that he had, moreover, held two interviews with Mr. Hunter, the chief clerk of the Department of State, who had also told him that the United States laid claim to those islands.

The minister of foreign affairs then proceeded to say that the information had surprised the government, for it had not anticipated any commercial agitation in the United States respecting the Lobos islands, especially as, from the different letters published on the subject in England, and from the opinion expressed by the British prime minister, it must be apparent that those islands belonged to Peru, and were as much an integral part of the domain of the republic as the Chinha islands or any other portion of the territory detached from the coast. He said that the United States had always evinced the greatest friendship for Peru, and had taken the warmest interest in the independence and prosperity of the country; that, therefore, Peru, in common with the other republics of South America, regarded the United States as the model upon which they should fashion their institutions, and through whose example they hoped to attain to wealth and power; that they looked to the United States as their natural protector in extreme cases, and the President, therefore, could not believe that the government of the United States would turn from the course it had hitherto pursued and countenance an attempt to despoil Peru of her just rights. He felt convinced that if the subject was fairly brought before the cabinet at Washington it would

find, upon examination of the proof which could be produced, that the jurisdiction of Peru over the Lobos islands had existed from the most ancient times.

I told the minister, in reply, that I had received no despatches from the department upon the subject, and, consequently, was unable to inform him what were the views of my government in relation to the Lobos islands, or whether it had taken the matter at all into consideration. Until I heard officially from the Secretary of State it was impossible for me to explain the conversation said to have taken place between him and the Peruvian chargé d'affaires. That, in questions of this nature, it was necessary to have the opinions and views of a government expressed in writing, and not to rely upon the accuracy of a report of verbal communications. That the chargé d'affaires might either not have clearly understood what the Secretary of State said, or have given greater force to his words than he intended to convey. That I thought the title of Peru to the Lobos islands was perfect, and had said so in a despatch written some weeks ago, when the news that certain British merchants claimed the right to trade there had reached Lima. That, therefore, I was under the impression the Secretary of State, who had, doubtless, read the publications in the "Times" and other English papers, might have told Mr. Osma that there was some doubt respecting the right of Peru to exclusive jurisdiction over those islands, and that, until it should be distinctly proved that Peru possessed it, the government of the United States would protect its citizens in trading there. That, if the chargé d'affaires said he could substantiate that right by conclusive proof, the Secretary of State very probably told him that the United States would indemnify the Peruvian government for the guano taken away. But I did not think the Secretary had said that orders would be sent out to the squadron to protect vessels trading to the islands.

That, with respect to the assurance given in the advertisement, made by Mr. Trundy, I did not lay much weight upon it, as it was well known that merchants, when about to engage in a speculation, endeavored to exhibit the chances of profit in the best light to the public, and sometimes offered guarantees they did not actually possess, but which they hoped they might afterwards obtain; and such, it appeared to me, was the case with the advertisement he had cited.

That the United States was essentially a mercantile country, and every assurance or guarantee given by the government in commercial affairs would, unquestionably, be proclaimed to the public. I said that whatever may have been the opinion in the United States at the last advices, he might be assured that the government would not disregard any representations made by Peru, and that it would respect the established rights of this republic as soon as they were made apparent; and that I should be happy to communicate to the Secretary of State any information calculated to elucidate the question.

The minister of foreign affairs then proceeded to explain the grounds upon which Peru claims the right of dominion in the Lobos

and other islands on the coast. They are stated in the "*Memorandum*," of which a translation is annexed, (H,) to which I beg to refer, with the observation that they appear to me to demonstrate conclusively that Peru has the right, both by priority of discovery and priority of possession.

The report that the United States intend to take possession of the Lobos de Afuera has alarmed this government exceedingly and caused the greatest excitement in the public. This was increased by the news of the total dissolution of General Flores' expedition against the Ecuador. Under these circumstances the executive appealed to the council of state for authority to purchase and arm steamers, to increase the army, and to raise a loan to defray the necessary outlay for the defence of the country. The council of state remained in secret session for two days, and, finally, by a resolution passed on the 2d instant, gave the government full powers to act as it might think advisable.

On the 3d of August I received a note from the minister of foreign affairs requesting to be informed whether the United States intended to protect the commercial expeditions said to be preparing in different ports of the Union to take guano from the Lobos islands, to which I replied on the 5th instant. Copies of these are annexed, (A, B.)

The resolution of the council of state was first published in the "*Interprete del Pueblo*," a newspaper said to be in the confidence of the government; and as the editor, in speaking of the armaments about to be made by the executive, informed the public that they were called for by the questions in agitation concerning the islands of Lobos and the character that the official relations of Peru had assumed with certain nations of the north, I considered the allusion to the United States to be so palpable that I addressed a note on the 6th to the minister, demanding whether the notice given in that newspaper of the motives which induced the said resolution were correct, and if so, whether the armaments were to be directed against the commerce and citizens of the United States. To this the minister replied on the same day. (See documents C and D, annexed, and also my note to Mr. Tirado, dated August 9, (G.) Mr. Tirado has just been named minister.)

I stated in despatch No. 103, dated June 24, 1852, that "the right of property in them (the Lobos islands) was incontestibly vested in the Peruvian nation," and as the question concerning that right has been raised in the United States, I proceed to give my reasons for entertaining that conviction.

It is well known that under the dynasty of the Incas Peru had attained a state of improvement, not to say civilization, superior to that of Siam or Muscat, and probably equal to that of China at the present day. Public roads traversed the country; public communications were kept up by couriers; aqueducts were constructed to irrigate the fields; and agriculture was pursued on higher principles than is the case now. "They made great use of guano," says Mr. Prescott, in his *Conquest of Peru*, volume 1, page 135, "the stimulating and nutritious properties of which the Indians perfectly appre-

ciated." "The Incas took their usual precautions for securing this important article to the husbandman. They assigned the small islands on the coast to the use of the respective districts which lay adjacent to them. When the island was large it was distributed among several districts, and the boundaries for each were clearly defined. All encroachment on the rights of another was severely punished," &c. *Ib.*, page 136.

From this account, which is taken from the best authorities, it is apparent that the Incas protected and encouraged the agriculture in their empire as carefully as the most civilized nation of modern times. They had established the right of property in their dominions, and had unquestionably discovered and taken possession of the guano islands all along the coast. It can scarcely be doubted, then, that if the aboriginal government existed at present, the United States would have recognized its sovereignty over the Lobos and other islands, and would probably have concluded treaties with it in the same manner as with Siam, Muscat, and China. Moreover, the dominion of an Indian government, constituted as that of the Incas, over a coast and the islands adjacent to it, is more complete than the possession recognized as belonging to the Indians of North America, or other tribes leading a nomadic life. In the former case there is a settled determination of residing in and governing the country so inhabited; in the latter only a temporary occupancy, without that fixed purpose of settlement required to form a nation. In the former the inhabitants may be considered as independent, and possessing a responsible government, and their right to the country established, so as to be only divested by conquest or by cession under treaties. In the latter instance the country may be occupied by the nation first discovering it, and the tribes fall under its dominion as a matter of course.

It is to be observed that the occupation of Peru by the subjects of Spain is invariably styled "*the conquest*," a term which I conceive is only applicable in strictness to the case of a war between nation and nation. But be that as it may, it is clear that Spain acquired by the victories of Pizarro and his followers all the rights over Peru that the Incas possessed. Now it is certain that the subjects of the Incas were in the habit of visiting the Lobos, and other islands on the coast, to obtain guano for agricultural purposes, and as their descendants continued to do the same as Spanish subjects, and do so now as Peruvian citizens, it would seem that the present government can show a conclusive occupation of those islands.

Referring to a more modern period, we find in Herrera's history, fourth decade, book second, page 37, the following account of the islands of Lobos which were "discovered by Don Francisco Pizarro:—"

"The mouth of the river Tumbes is in three degrees south of the other part of the equinoctial line; from thence the coast runs to Cape Blanco to the southwest, and from the cape to the river are 15 leagues and it lies in four degrees, from thence the coast turns to the south until the islands of Lobos. Between Cape Blanco and the islands of Lobos there is a point running out into the sea, called Parina."

* * * * Speaking of Payta, he says that it "is the principal port

of all Peru and of all the vessels which come to it and from the islands of Lobos."

Further on the historian says: "The point of Aguja is in six degrees; to the south of it are seen two islands, which are called 'Lobos Marinos,' (sea wolf,) from the great number found on them."

These last are now called the Lobos de Afuera, and those whose possession by Peru is now called in question.

In a Geographical Dictionary or Gazetteer, published, by royal permission, at Madrid in 1787, by Colonel Alcedo, is to be found the following under the title "Lobos," after mentioning islands of the same name in other parts of the world.

"Another (island) of the same coast of Peru, in the province and corregimiento of Saña, called Windward, to distinguish it from another of the same province and kingdom called Leward, which is near the point of Aguja."

These two quotations prove that neither Captain Lawson nor Captain Morrell discovered the Lobos de Afuera islands, and to show that they are not entitled to the honor, it may be observed that the islands are in a direct line of navigation between Callao and Guayaquil, and few vessels sailing from the former to the latter port can avoid passing in sight of those islands, if the weather be clear. I myself saw them on my passage in the steamer from Panama in December, 1847.

The islands were surveyed under the direction of the Peruvian government by Mr. Carter, an American engineer, in 1847, and the enclosed number of the "Interprete del Pueblo" contains the result of observations taken by Don José Villa in 1842, and Señor Rivero in 1846.

The preceeding is sufficient to indicate that Peru can justly claim the right of possession and property in the Lobos islands. I regret that such is the case, because it enables this government to continue in the undisturbed enjoyment of a monopoly of an article so necessary to the agricultural interest of the United States, which, like all others of the same kind, is odious and vexatious. I have endeavored repeatedly to induce it to adopt another system for the sale of its guano, but the present one is too profitable to hope to obtain any relaxation of importance. Whilst, however, we may very properly complain of the monopoly as it exists, we have, as it appears to me, no other remedy than negotiation, and it would not comport with the dignity or the honor of the government of the United States to wrest by force that which it cannot compass by negotiation.

The president of Peru has appointed D. Joaquin J. de Osma envoy extraordinary and minister plenipotentiary to the United States. This is the second time he has acted in that capacity, and the object of his mission is to negotiate upon the question at present under discussion.

Should the government recognize the title of Peru to those islands, the vessels which may have sailed from the United States to take in guano at them, will not be seized or confiscated, but can, at the option of their captains, sail for another destination or be chartered by the agents of the Peruvian government to carry guano to the United States

or England. Such, at least, are the terms which the minister of foreign affairs expressed his willingness to accede to.

It is desirable that this question should be settled as soon as possible, for the present state of public feeling in Peru is decidedly against the United States, and the commercial and other business of our citizens established in Lima and other ports of the country suffers accordingly.

I have the honor to be, sir, your obedient servant,

J. RANDOLPH CLAY.

Hon. DANIEL WEBSTER,
Secretary of State.

A.

J. J. de Osma to J. Randolph Clay.

[Translation.]

LIMA, August 3, 1852.

By communications received from the United States through the steamer which arrived at Callao on the 31st ultimo, my government has learned that vessels were being chartered at various ports of the United States for the purpose of coming hither to take in cargoes of guano at the Lobos islands, the property of Peru, under the mistaken conception that those islands are uninhabited, and that they were not comprehended within any national jurisdiction; and the letters received also asseverate that those charters had been effected in the understanding that the government of the United States would protect such vessels as engaged in this branch of commerce.

His excellency the president, whose attention has likewise been called to this matter, directs me to address you for the purpose of ascertaining whether your government is really, in any manner, inclined to favor the trade which the vessels, now getting ready in the United States, may carry on in the guano of the Lobos islands, which are within the dominion of the republic; and in order that you will be pleased to tell me whether there has been communicated to your government the necessary information in regard to the present occupation of those islands, to the immemorial possession which Peru has always had of them, and to the various acts of sovereignty which it has exercised therein, without its jurisdiction having been questioned by any nation whatever. His excellency hopes that when the illustrious government of the United States has received full information in relation to these circumstances it will not permit the rights of an American nation, friendly to its own, to be attacked under the shelter of its flag; considering that the government of her Britannic Majesty has just declared that it will not protect its subjects in any infringement of the fiscal laws of Peru, or the rights of that country to the Lobos islands.

On this occasion I renew to you the assurances of my high esteem and distinguished consideration, subscribing myself your obedient servant,

JOAQUIN J. DE OSMA.

B.

The undersigned, chargé d'affaires of the United States of America, has just received the note which his excellency D. Joaquin J. De Osma, minister of foreign affairs, addressed to him on the 3d instant, informing him, that "from communications received from the United States, by the steamers which arrived at Callao on the 31st ultimo, the Peruvian government has learned that vessels were being chartered, in different ports of the Union, for the purpose of proceeding to load with guano at the islands of Lobos, belonging to Peru, under the mistaken idea that they are desert islands, and not under the jurisdiction of any nation; and, also, that the letters received "by the same conveyance" assert, that "the charter parties were entered into with the understanding that the government of the United States will give protection to the vessels employed in that trade."

His excellency further states, that "he has been directed, by his excellency the President of Peru, to inquire of the undersigned, whether the government of the United States intends to favor the trade that the vessels preparing for it in the United States may carry on in guano from the islands of Lobos, which belong to the domain of the republic; and, also, to know whether the undersigned has communicated to his government the necessary information respecting the actual occupation of those islands, and of the possession which Peru has held over them since time immemorial; as well as of the several acts of sovereignty which it has exercised therein, without its jurisdiction being denied by any nation; and that his excellency the President trusts, that when the government of the United States shall be informed of these facts, that it will not consent that the rights of an American people, in friendship with it, shall be attacked under cover of its flag, when the government of her Britannic Majesty has recently declared that it will not protect any infraction on the part of its subjects of the fiscal laws of Peru, or of the rights of the latter in the islands of Lobos."

In reply to the first question in his excellency's note, the undersigned has the honor to state, that he has not received any communication from his government, either in relation to the islands of Lobos, or respecting the vessels said to have been chartered in the ports of the United States to take guano from those islands. He is, therefore, unable to say whether the government of the United States intends to adopt any measures with regard to the islands of Lobos, or the trade to them.

In reply to the second question, the undersigned begs to inform his excellency, that he has already expressed to the Secretary of State the opinion that the sovereignty of those islands is vested in Peru; and, moreover, announced to him that governors had been appointed by the President to reside in and take command of them. That opinion was not supported by any documents to confirm the title of the Peruvian government to the Lobos islands; but he will take pleasure in communicating to his government any evidence that his excellency

may think proper to furnish calculated to show that the property and jurisdiction in them belong undoubtedly to the republic of Peru.

The undersigned will observe, in conclusion, that he is confident that the United States, without referring to any declaration of the government of Great Britain upon the subject, will duly consider and respect the established rights of the Peruvian nation, with which they desire to entertain the most friendly and intimate relations.

The undersigned profits by this occasion to renew to his excellency the minister of foreign affairs the assurance of his most distinguished consideration.

J. RANDOLPH CLAY.

LIMA, August 5, 1852.

C.

Mr. Clay to Mr. Osma.

The "Interprete del Pueblo" newspaper, published in this capital, in its number 152, dated August 4, 1852, contains the following article, under the head of—

"Council of State.

"The ordinary means of defence not sufficing to guard the republic against events which may germinate from the questions which are at present in agitation with respect to the *islands of Lobos*, and from the character that our official relations with some of the nations of the north have assumed, the supreme government has demanded of the council of state the necessary authorization to take such measures as would place it in a position to fulfil properly the first of its duties, which is, to preserve uninjured the rights of the people whose destinies are confided to it; and, on the 2d instant, the body, preserver of the laws, passed unanimously the following resolution:

"Considering, 1st. That by the exposition made by the government, and the accompanying documents, it appears that the circumstances in which the republic is placed are critical.

"2d. That in this state it is obligatory upon it to defend its rights by employing to that effect all its power and resources, the council, conformably to the 4th section of the 103d article of the constitution, decrees as follows:

"Sole article. The executive is authorized to make all the armaments, by sea and land, which, in his judgment, may be necessary to defend the integrity of the territory and rights of the nation, expending the sums required for those armaments, and raising loans to meet the outlay; making use of this authorization during the existence of the danger, and rendering an account, at the proper time, of whatever may be done, conformably to the provisions of the constitution.

"Approved,
"LIMA, August 2, 1852."

[Two rubricas.]

"In consequence of this act, which reveals the profound confidence which the council places in the probity and patriotism of his excellency the President, steps have been taken for the immediate purchase of three steamers of great power, which will be shortly armed, and General Denstua has been ordered to proceed to the islands of Lobos, to carry into execution whatever may be required for their respective security.

"May heaven grant that skill may guide the steps of the administration, and that all our fellow-citizens may gather around the national standard, to make it flame with honor and be viewed with respect by all the nations of the earth."

As the public of Lima generally attributes to the "Interprete del Pueblo" a semi-official character, and as the article above recited refers to questions concerning the Lobos islands and the official relations of the Peruvian government with certain nations of the north, and gives those as the motives which induced the council of state to adopt the resolution bearing date the 2d instant; and as it appears, moreover, that the government is about to purchase and arm three steamers of great power, in virtue of the said resolution, and as the article in question, taken in connexion with the contents of the note which the undersigned had the honor to receive from his excellency the minister of foreign affairs, dated the 3d instant, relative to the mercantile expeditions said to be preparing in the United States to take guano from the Lobos islands, would seem to indicate that it was the intention of the council of state to include the United States in the said resolution. The undersigned deems it to be his duty to request that his excellency the minister of foreign affairs will have the goodness to inform him whether the article above mentioned contains a correct exposition of the motives which caused the resolution of the council of state, and, such being the case, whether the armaments stated to be in preparation by the Peruvian government are to be directed against the commerce and the citizens of the United States.

The undersigned, whilst making this request, entertains the hope that the warlike preparations referred to are destined to provide against contingencies not connected with the nation he has the honor to represent, and he flatters himself that the reply of his excellency to the present note will remove the impressions which the resolution and article in question are calculated to convey.

The undersigned takes this occasion to offer to his excellency the minister of foreign affairs the renewed assurance of his most distinguished consideration.

J. RANDOLPH CLAY.

LIMA, *August 5, 1852.*

D.

[Translation.]

Mr. Osma to Mr. Clay.

LIMA, August 6, 1852.

SIR: I have had the honor to receive your note dated yesterday, in which, referring to an article published in No. 152 of the newspaper entitled "Interprete del Pueblo," which treats of the authorization given by the council of state to the executive power, under date of the 2d of the present month, to increase the forces by land and by sea, you were pleased to say to me, "that as the public of Lima generally attributes a semi-official character to the 'Interprete del Pueblo,' and as the article cited referred to the question of the islands of Lobos and to the official relations of the government of Peru with certain nations of the north, and indicated those as the motives which had induced the council of State to adopt the resolution of the 2d instant, and as, furthermore, it appears that the government was about to purchase and arm three steamers of great power, in virtue of that resolution; and considering, moreover, the article in question, in connexion with the contents of the note which I addressed to you, dated the 3d, upon the mercantile expeditions said to be preparing in the United States to take guano from the islands of Lobos, appeared to indicate that it had been the intention of the council of state to include the United States in said resolution," you, sir, thought it your duty to request me to inform you whether the article above mentioned, "contained an exact exposition of the motives which the council of state took into consideration in making its resolution, and such being the case, whether the armaments preparing by the government were to be directed against the commerce and citizens of the United States."

In answer to the above mentioned note, I must assure you, sir, that the "Interprete del Pueblo" is not a semi-official periodical, as you say to me is generally believed; that the government cannot assume the responsibility of the opinions that it emits, and that the exposition which it has made of the motives which governed the council of state, in giving its resolution of the 2d instant, are not correct.

The authorization given by that body to the executive power to augment the land and naval forces of the republic, is merely a measure of precaution, adopted in view of the state of incomplete defence in which our coasts and adjacent islands are found under present circumstances, when the relations of Peru with some of the neighboring States are not of a character to insure perfect security, and which may produce political entanglements, against which it may be necessary to oppose force. But the said resolution had no view to facts concerning commerce, nor to the relations we maintain with the United States, with whom the government of Peru desires to preserve the most perfect intelligence, and from whom it trusts to continue to receive the marks of consideration and good will which it has received up to the present moment.

Trusting that this explanation will satisfy the object you wished to attain in addressing to me your note of yesterday, I renew the assurance of my most distinguished consideration, and subscribe myself your obedient servant,

JOAQ'N J. DE OSMA.

G.

Mr. Clay to Mr. Tirado.

LIMA, August 9, 1852.

The undersigned has the honor to acknowledge the receipt of the note that D. Joaquin J. de Osma, minister of foreign affairs, addressed to him on the 6th instant, in reply to that of the undersigned, bearing date the 5th instant.

The undersigned has read attentively the observations made by the minister of foreign affairs, respecting the article which appeared in the "Interprete del Pueblo," No. 152, and the explanations entered into by the minister, concerning the armaments, by sea and by land, about to be made by the government of Peru, under authorization of the council of state, and the undersigned has been gratified to receive the assurance that they are in nowise entered into with a view to the commerce or the relations between the two countries, and, consequently, the undersigned takes the earliest moment to assure his excellency D. José Manuel Tirado, minister of foreign affairs, that the explanations above referred to are perfectly satisfactory, and calculated to remove the impressions which the tone of the article in question, in publishing the first notice of the resolution of the council of state of the 2d instant, might naturally excite.

The undersigned profits by the occasion to renew to his excellency the assurance of his most distinguished consideration.

J. RANDOLPH CLAY.

H.

[Translation.]

Memorandum.

The islands of "Lobos de Tierra" and "Lobos de Afuera," were discovered by Francisco Pizarro in the first voyage he made along the coast of Peru in 1527, having taken possession of those islands in the name of the king of Spain. Herrera, the historian, mentions that discovery in his 4th decade, book 2d, where he describes the coast of Peru. The name of Lobos was given to them by the conquerors, from the great number of sea lions that they found upon them. Lord Anson in his voyages, and all the navigators of the South sea, speak of

these islands as belonging to Peru, and all the maps place them in this region.

Upon examining the map of Peru, it will be seen that both islands are within the degree of longitude passing through Cape Blanco and Punta de Agujos, which are the most western points of Peru, and are situated in a kind of gulf formed there by the coast—that is to say, within the waters of Peru.

Upon the establishment of the judicial districts (*corregimientos*) of Peru soon after the conquest, those islands appertained to the district of Saña, as will be seen on referring to Alcedo's *Gazetteer* of the Spanish Possessions.

The Spanish government exercised constant jurisdiction over those islands and over all those adjacent to them, for it prohibited all foreign vessels from fishing among them, and allowed the fishery only to Spanish subjects, among whom were reckoned the aborigines of the coast. The prohibition from fishing, to foreign vessels, is mentioned in various treaties concluded by Spain since the treaty of Utrecht. In that of 1783, with England, the prohibition was extended to ten leagues from the coast.

The guano contained on the islands lying near Peru, including those of the Lobos, was no secret, seeing that, previous to the conquest, the Indians manured the land with guano, and carried it from the Lobos for the agriculture of Lambayeque.

Since the independence, the Indians, who by the laws of the republic are citizens, have continued to fish on the islands of Lobos, remaining there, under license from the government, during the season of the year adopted to that employment. The government had also given, from time to time, licenses to foreign vessels to fish in the neighborhood of the islands of Lobos, but the abuses that some of them committed obliged it, in 1833, to issue a decree, under date of the 6th of September, prohibiting all foreign vessels from fishing on the coast and islands of Peru, including those of the Lobos.

Mr. Larned, *chargé d'affaires* of the United States, requested the government to reconsider that decree, but did not deny the right it possessed, or the dominion it exercised, over the islands. The government did not accede to Mr. Larned's request, and replied to him to that effect on the 13th of March, 1834.

Previous to returning that answer, Congress, on the 6th of November, 1833, enacted the first commercial regulations adopted by Peru since her independence, and, by the 20th, it declared that every vessel coming from abroad and anchoring in the islands of Lobos should be confiscated. Those regulations were communicated to all the public agents, including Mr. Larned, and none objected to them.

When, in the year 1842, guano became an article of export, Messrs. Odonovan and Alcantara, citizens of Trujillo, asked the privilege of shipping it from the islands of Lobos and Huañapé, and, by a resolution dated February 22d, 1842, the government refused it, demonstrating that there was no discovery, as it had had notice of these deposits for a long time previous.

At that time the government prohibited anchoring in the islands of Lobos, and, in consequence of that decree, dated March 12, 1842,

the British brig *Hibernia* was seized in 1844, and only escaped confiscation by the captain proving ignorance of the law.

In 1846 the government, desiring to ascertain the quantity of guano contained in the deposits on those islands, employed Carter, an American engineer, who examined and surveyed them, and made a map of the whole, including the Lobos, in 1847.

By a decree of the 8th of May, of this year, all the islands were placed under the sub-prefectures nearest on the coast, the Lobos de Tierra being annexed to that of Lambayeque and Lobos de Afuera to Chiclayo. Revenue officers, and a military garrison, under the command of a governor, were established on both at the same date.

Extract from the Commercial Regulations issued on the 6th of November, 1833.

ARTICLE 20. If any vessel, coming from abroad, anchor in other ports, or in those of the islands of Lobos, Huañapé, Huara, Hormigas, and others known by the name of Huano Islands, she shall be confiscated, as well as her cargo, if belonging to the captain or passengers, if they have knowingly transgressed the law.

Mr. Clay to Mr. Webster.

[Extract.]

[No. 107.]

LEGATION OF THE UNITED STATES,
Lima, August 25, 1852.

SIR: The excitement caused by the news that vessels were being fitted out in the United States to load with guano at the Lobos islands was greatly allayed by the fact, that the Peruvian government did not receive any further communication on the subject from its diplomatic agent at Washington by the last steamer from Panama; and that no mention was made of it in the private letters, or in the newspapers, received by the same conveyance. Public confidence has been, consequently, somewhat restored, and it is now generally believed that the Peruvian chargé d'affaires was either unnecessarily alarmed, or had misunderstood the remarks of the Secretary of State, in reference to the jurisdiction of Peru over those islands.

As it is possible that vessels may have sailed from the United States for the Lobos islands, which are now occupied by troops sent for the special purpose of protecting them, I wrote on the 18th instant to the commander-in-chief of the United States naval forces in this ocean, and requested him to come in person or to send a vessel of the squadron to Callao as soon as convenient. My object in doing so was to consult with Commodore Macaulay, respecting the best means of

preventing any collision between the vessels which may arrive at the Lobos islands and the Peruvian troops stationed there. The presence of a vessel of war of the Union upon the spot would probably serve that purpose, and as the flag-ship of the squadron sailed some time since from Payta for Valparaiso, there is ample time for the commodore to touch at Callao and go to the Lobos islands before the expected vessels arrive there.

Should any of the latter be taken possession of by the Peruvian authorities, I shall take the necessary steps to prevent their being confiscated, should there be any disposition on the part of this government to proceed to extreme measures.

* * * * *

I have the honor to be, sir, your obedient servant,

J. RANDOLPH CLAY.

Honorable DANIEL WEBSTER,
Secretary of State.

Mr. Clay to Commodore Macauley.

LEGATION OF THE UNITED STATES,
Lima, August 18, 1852.

the Peruvian government received despatches from its chargé d'affaires at Washington, containing a report of a conversation between him and the Secretary of State, respecting the Lobos de Afuera islands.

SIR: By the steamer which arrived at Callao on the 31st ultimo, the chargé d'affaires informed his government that he had brought the subject to the notice of the Secretary of State, in consequence of an advertisement which appeared in the New York newspapers, offering to charter vessels to take guano from the Lobos islands, and stating that such vessels would have the protection of the government of the United States whilst loading there. The chargé added, that he had explained to Mr. Webster the undoubted title of Peru to those islands, and protested against the vessels going there, and that the Secretary of State told him that orders would be sent to the squadron to protect them, and, if it should afterwards appear that the said islands belonged to Peru, the United States would pay for the guano taken away by the vessels.

This information caused the greatest excitement in Lima, and the council of state has given power to the President to increase the army, and to purchase and arm steamers; and although the minister of foreign affairs has assured me that these preparations are not made with any view to the United States, still a force has been sent to the Lobos islands, to prevent any vessels loading there unless under charters from the government agents.

I apprehend, therefore, that in case vessels belonging to citizens of the United States should go to those islands and attempt to take in guano, as most probably will be the case, there may be some collision between their crews and the Peruvian authorities and soldiers stationed

on them. In order to avoid such a disagreeable result, I think it necessary that a vessel of war of the United States should proceed to the Lobos de Afuera very shortly, and it is my decided opinion that your presence in the "Raritan" at Callao is absolutely required. Were you here we could arrange together what would be the proper course to pursue under present circumstances.

I trust, therefore, that you may coincide with me in this matter, and return to Callao as soon as possible.

Very respectfully, sir, your obedient servant,

J. RANDOLPH CLAY.

Com. C. S. MACAULEY,

Commanding in chief the U. S. naval forces, Pacific ocean.

Mr. Webster to Mr. Clay.

[No. 30.]

DEPARTMENT OF STATE,
Washington, August 30, 1852.

SIR: I transmit a copy of a recent correspondence between this department and Mr. Osma, and between the department and Mr. J. C. Jewett, relative to the Lobos islands. Our information respecting the acts of jurisdiction which both Spain and Peru may have exercised over those islands is by no means complete, and it is desirable that you should supply our deficiencies, which, it is presumed, can easily be done at Lima. It is particularly desirable to know whether the aborigines of Peru or the inhabitants of that country, while it was a dependency of Spain, were in the habit of taking guano from the islands off the Peruvian coast, and especially from the Lobos islands; whether guano has been taken from the latter, either for exportation abroad or for use on the neighboring mainland since Peru became independent, and whether, if the Peruvian government has exercised acts of jurisdiction over Lobos de Tierra, it has exercised the same, or other similar acts over Lobos de Afuera. You will also examine the files of the legation for the purpose of ascertaining if the minister for foreign affairs of Peru replied to Mr. Larned's note of September 30, 1833, remonstrating against the decree upon the subject of the fisheries. A copy of any other decrees upon that subject, and also those of 1842, respecting guano, would also be acceptable, as well as any information tending to show that the latter were officially communicated to the legation of the United States at Lima.

Upon the present state of the facts and the evidence, this government cannot admit the right of Peru to drive away United States vessels from the Lobos islands. We see nothing thus far to change the sentiments expressed in the letter of this department to Mr. Osma, and it would be a want of candor not to say that we are not aware of any source from which new facts favorable to the claim of Peru are likely to be drawn. Nevertheless, it is the President's purpose to give a fair consideration to everything which the Peruvian government may produce in support of its asserted right. In the meantime,

it is a great object to prevent any forcible collision. The bearer of this despatch, Mr. Miles, of New York, will probably be able to state accurately the number of vessels which have proceeded from ports of the United States under the expectation of loading with guano at the Lobos islands. These are supposed to be from twenty to thirty. At a more recent period many other vessels, it is said, have been chartered under the idea of claiming indemnification of this government if they should not be allowed to load with guano at those islands without hindrance from the Peruvian government. These last operations and their projectors will find no countenance here.

All danger of collision would probably be averted if the Peruvian government would allow those United States vessels which have sailed from our ports between the 1st of June and the 24th instant, for the Lobos islands, to load with guano there without molestation. A letter to the President on this subject from Mr. Bokee, the naval officer at New York, is herewith transmitted. This communication fully sets forth the importance of the measure to the parties immediately interested.

Whatever may be the exclusive rights of Peru to the Lobos or other islands near the Peruvian coast abounding with deposits of guano, the conviction is deep and general among the consumers of the article in foreign countries, or at least in the United States, that the high price of guano is occasioned by the policy which that government has thought proper to adopt in reference to its exportation, and that that policy tends to the advantage of a few individuals at the expense of the consumers. If, therefore, the Peruvian government expects its exclusive claims to be assented to, it will be necessary that its policy upon the subject should be changed.

The difference between the freight and necessary charges on the article and the price consumers are obliged to pay for it is unreasonable. If this difference should be materially lessened the consumption would be more than proportionably increased, and, without question, the net revenue which the government would derive would be augmented in the same degree.

You will consequently urge these considerations on the attention of the minister for foreign affairs in a friendly but not a dictatorial spirit. While we deem it our duty to be vigilant and zealous in endeavoring to promote the interests of our own citizens, we claim no right to prescribe the course to be pursued by Peru. We, however, deem it our duty as a friend to offer our advice, in the firm belief that its adoption will redound to both her immediate and permanent welfare.

You will cause the Peruvian government to understand that these last observations are submitted with no purpose whatever of expressing any doubt of the right of citizens of the United States to visit these islands, as they have for so many years been accustomed to do, or relaxing from their demands in that respect. Their only object is to signify to the Peruvian government that if that government would be satisfied to sell the guano there at quite a moderate price per ton, and at that price make the trade open, such a measure would prove the only one which would probably give general satisfaction. And

you will please to state to the Peruvian minister for foreign affairs, in the strongest terms, the conviction of this government that the present policy of Peru is certainly as injurious to her as it is to the rest of the world.

Mr. Miles is well acquainted with Peru, and with the guano trade, and has been at the islands. He is a gentleman in whom we have confidence, and you will therefore confer freely with him. We despatch him by the first opportunity, in order that no time may be lost. You will please return an answer to this letter by him and send him back as soon as possible. On the receipt of that answer all further and necessary orders will be transmitted to the vessel of war on the Pacific.

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

JOHN RANDOLPH CLAY, Esq., &c., &c., &c.

Mr. Conrad to Mr. Clay.

[Private.]

WASHINGTON, September 21, 1852.

DEAR SIR: Since the accompanying despatch from the State Department was prepared, Mr. de Osma, the newly appointed minister of Peru, has announced to the department his arrival in Washington. He has not yet presented his credentials; but there is reason to believe that he is fully authorized to negotiate on all matters pending between the two governments.

For this reason, while it is considered advisable that the despatch should be transmitted as originally intended, it is thought safer not to communicate its contents to him or his government until after we have heard what he has to say. You will, therefore, not make known to the Peruvian government the instructions contained in the despatch until you are directed to do so by a note which I shall address to you to that effect.

Very respectfully, your obedient servant,

C. M. CONRAD.

JOHN RANDOLPH CLAY, Esq., &c., &c., &c.

Mr. Conrad to Mr. Clay.

[No. 31.]

DEPARTMENT OF STATE,
Washington, September 21, 1852.

SIR: In the letter from this department to you of the 30th ultimo you were informed that the information which our government possessed "respecting the acts of jurisdiction which both Spain and Peru may have exercised" over the Lobos islands was by no means complete, but that, "as it was the President's purpose to give a fair com-

sideration to anything which the government of Peru might produce in support of her asserted right of ownership " over these islands, you were directed to supply the deficiency in our knowledge on this subject from such sources of information as are no doubt accessible to you.

In your despatch, (No. 105,) dated 7th ultimo, and which was received on the 16th instant, you have, to some extent, anticipated the above request, and furnished information on some of the points on which it was requested.

It is proper to add, also, that prior to the receipt of this despatch, in consequence of the information contained in the one that preceded it, dated 24th June, the President was induced to believe that the claim of Peru to exclusive dominion over these islands was better founded than it had been led to suppose. The orders that had been despatched to the commander of our naval forces on the Pacific to protect such of our vessels as might wish to take cargoes of guano from these islands were accordingly countermanded some weeks since.

The President now directs me to say that the information contained in your last despatch has materially changed the aspect of the case, and that candor and fair dealing, as well as the interests of both countries, require that this should be made known to the Peruvian government as speedily as possible.

You will, therefore, avail yourself of the earliest opportunity of assuring the government of Peru that the President would deeply regret if anything in the language or the acts of this government should have been construed as evidence of a wish to encroach on the rights or the territory of Peru.

That the policy of Peru in granting a monopoly in the guano trade is considered by this government as both illiberal and impolitic, inasmuch as it imposes very vexatious burdens and restrictions on foreign nations without any corresponding benefit to herself.

That as this policy bore very hardly upon many of our citizens, and created great dissatisfaction, this government had determined to subject the claim set up by Peru to exclude all other nations from the right of taking guano from these islands to the most rigid scrutiny. That as the islands were uninhabited, and of so little value that their very existence was until recently scarcely known, this government had no knowledge of the acts of ownership or jurisdiction on which the government of Peru rested its claim of sovereignty over them; and, until an opportunity should be afforded of investigating that claim, wished to avoid doing anything which could be interpreted into an admission of its validity. That since the communications heretofore made to that government further information has been obtained on the subject; and, although that information is not considered sufficient to establish conclusively the title of Peru to these islands, it does, nevertheless, when taken in connexion with her actual possession of and exercise of jurisdiction over them, create in her favor such a presumption of title as this government is bound to respect, unless on further investigation it should prove to be unfounded. That this department, therefore, acted somewhat hastily in assuming that the Lobos islands were waste and unappropriated land

from which the citizens of the United States had a right to take guano in common with those of Peru.

That, having arrived at this conclusion, a proper sense of what is due to the character of the nation for justice and fair dealing, as well as the strong desire entertained by him to cultivate the most friendly relations with a sister republic, has prompted the President to lose no time in making this frank declaration.

With a view to enable this department to arrive at an ultimate conclusion on this question, you will please to transmit as early as practicable all the information you may be enabled to procure, not only on the points to which your attention was called in the letter of 30th August last, but on such other points connected with it as may, in your opinion, tend to elucidate it.

When documents or books are referred to, you will please transmit them, or copies of them, to this department.

I am, sir, very respectfully, your obedient servant,

C. M. CONRAD,
Acting Secretary.

JOHN RANDOLPH CLAY, Esq., &c., &c., &c.

Mr. Conrad to Mr. Clay.

[No. 32.]

DEPARTMENT OF STATE,
Washington, October 1, 1852.

SIR: Since the last despatch to you from this department, it has learned that the number of vessels which have sailed from the United States for the Lobos islands is greater than it had been led to suppose; and that even should they be furnished with a return cargo in guano, which, by your despatch of the 7th August, 1852, the department was informed they would be, the freight they would thus earn would not indemnify their owners. The expense of fitting out vessels for this business is said to be considerable, besides which, it is reported to the department that some persons embarked in this business in consequence of a letter from this department in which the opinion is expressed that United States vessels had a right to take guano at the Lobos islands, and that our naval forces in the Pacific would be instructed to protect them in the exercise of this right, and had, in consequence of this letter, made contracts for delivering the article at prices much below its ordinary market value. If such be the fact, and the Peruvian government should refuse them permission to load on their own account, those persons would no doubt sustain heavy losses. This government feels it incumbent on it to do all in its power to avert such a consequence. You will therefore state these circumstances to the government of Peru, and will earnestly press upon them to allow the vessels that sailed for the Lobos islands, in consequence of the letter above mentioned, to load with guano on their own account. You will urge upon their consideration that while this government has, out of respect for the professory rights of Peru, and to avoid the

possible occurrence of a collision between the vessels of the two countries, countermanded the order which had been given to the commander of our naval forces in the Pacific to protect our vessels in taking guano from those islands, and allowed Peru to remain in undisturbed and exclusive possession of them until the question of title could be examined and definitely settled; they are nevertheless extremely anxious that this concession should not be attended with serious injury to our own citizens. You will urge upon that government the equity of this demand. You will suggest to them that, while a compliance with it would be but a proper and reasonable return for the comity and moderation which this government has exhibited in reference to this question, a denial of it might exasperate our people, and thereby tend seriously to embarrass the satisfactory adjustment of this question. Your application will be made only on behalf of those vessels which may have sailed for the Lobos islands, whether from the United States or from foreign ports, in consequence of the letter above referred to. To guide you in determining what vessels are entitled to claim the benefit of your interposition, I will state that the letter above referred to was addressed to Mr. J. C. Jewett on the 5th day of June last; and that a letter to Mr. de Osmá, informing him that the order to Commodore McCauley had been countermanded, was published in this city on the 24th of August last.

I am, sir, very respectfully, your obedient servant,

C. M. CONRAD,
Acting Secretary.

JOHN RANDOLPH CLAY, Esq., &c., &c., &c.

Mr. Clay to Mr. Webster.

[No. 110.]

LEGATION OF THE UNITED STATES,
Lima, September 25, 1852.

SIR: The question as to whether the government of the United States intends to recognize the right of sovereignty of Peru over the Lobos islands, has produced an excitement in the public throughout Peru, and the feeling against the government and citizens of the United States is such, that should any collision take place between the vessels which have sailed from New York and other ports to load guano at the islands and the troops stationed there, I apprehend that the authorities will not be able to protect the persons and property of citizens of the United States residing in Lima and elsewhere in the republic. The letter purporting to have been addressed by the Secretary of State to Captain Jewett, upon the Lobos islands, which was published in the New York Herald and other newspapers, and translated and republished in the Lima journals, produced several articles, in which the United States were attacked in the most gross and vituperative terms. One in particular called upon the people to rise and "exterminate the hated race," "to seize their property, and kill, before Peruvians should be killed," &c.

Knowing the character of the people, and that the majority of the population of Lima is composed of negroes, mulattoes, and other mixed blood, most of whom would be glad of an occasion to attack foreigners, I called the attention of the minister of foreign affairs to the articles above referred to, and told him that I had exerted myself to quiet the public mind until the question should be finally arranged between the two governments; that I expected he would do the same, and that I insisted upon his using his influence to prevent the publication of articles calculated to cause a breach of the public peace and outrages against American citizens. He said that the government did not possess the legal means of controlling the public press, but that he would do what he could, and intended to write a circular to the different prefects, urging them to calm the people. Since then the subject of the "islands of Lobos" has been discussed by the writers for the periodicals with greater moderation and decency.

I have the honor to enclose a copy of a note addressed to me by Mr. Tirado, together with the circular before mentioned, and also a copy of a note, dated the 21st instant, informing me of the proceedings of this government in the case of the ship "Manlius," Baker, master, of Boston, which anchored at the islands of Lobos de Fuera, where she had gone to take in a cargo of guano, under instructions from her owners.

The "Manlius" is the first vessel belonging to citizens of the United States, which has arrived at those islands from abroad since the title of Peru to them has been doubted. She was warned by the authorities stationed there not to attempt to load; and the captain very prudently, in my opinion, obeyed the notice, and came to Callao to be regularly chartered by the agents of the government. The facts of the case are stated in the note of Mr. Tirado, and it seems to me that this government has proceeded with very commendable moderation.

You will see, sir, that similar measures will be adopted in reference to any other vessels which may go to those islands under like circumstances, provided they do not attempt to load after being notified to proceed to Callao, and obtain regular charter-parties.

Copies of my answers to these notes are also enclosed.

I may be permitted to observe, in conclusion, that I have not received any communication from the Department of State upon the subject. I presume, therefore, that your despatches must have miscarried, as it is not probable that I would be left without instructions or some expression of the views of the government upon a question having an important bearing upon the relations between the United States and Peru, and which, if decided against the latter, must inevitably cause a rupture between the two countries, and in all probability, expose the persons and property of our citizens in this quarter to popular outrage and violence.

I wrote to Commodore Macauley,* on the 18th of August, at Valparaiso, and requested him to come to Callao in the "Raritan," or

* See accompaniment to No. 107—*ante*.

to send another vessel of the squadron. He was at Valparaiso by the last accounts.

I am, sir, very respectfully, your obedient servant,

J. RANDOLPH CLAY.

HON. DANIEL WEBSTER,
Secretary of State.

[Translation.]

LIMA, *September 21, 1852.*

I have thought it proper to communicate to you, as I now do, a copy of the circular addressed, on the 17th instant, to the prefects and agents of the government in foreign countries, respecting the last news received from the United States relative to the freighting of vessels in that country for the purpose of shipping guano at the Lobos islands.

The government regrets to have seen certain publications in the periodicals of this capital, containing premature and imprudent assertions, which, as you know, it has no legal means of preventing. In the meanwhile, the circular expresses the true sentiments of the government upon this subject, and of its well founded hope in the equity and friendly spirit of the government of the United States, expecting that the latter will, by means of official acts, put an end, as there is no doubt but that it will, to the attempts made to take guano from the Lobos islands, which, in some of the ports of the Union, have brought about this state of things.

It affords me pleasure, on this occasion, to renew to you the sentiments of particular regard and distinguished consideration with which I am your very obedient servant,

JOSÉ MAN'L TERADO.

LIMA, *September 17, 1852.*

MR. PREFECT OF ———: The news received from the United States, as well as the periodicals published in that part of the world, show that the question of the Lobos islands is occupying, in a very particular manner, the attention of the government and people of North America. The Secretary of State of that republic had given private answers to some petitioners, upon the import of which certain speculators had relied, in order to freight vessels, thinking that the taking of guano from those deposits would be sustained by vessels-of-war of the United States stationed in these seas. But, besides the fact that there is cause for believing that such answers, and the orders given to the vessels-of-war, were not given with a view of trampling upon the rights of Peru, many circumstances known to the government tend to the conviction that the sovereignty and dominion of Peru over the Lobos islands will be respected, and that the government of the United States will not give its protection to those who propose to

violate the national rights and regulations, by taking away guano against the will of the government, which has considerable forces stationed at the islands for the purpose of preventing the shipping of guano by vessels that have not been authorized by a permit of the government.

I communicate this to you for your own information in the present state of the matter, and in order that, should the misrepresentation of facts by false announcements produce any irritation in the public mind, you may be prepared to allay the same, with the assurance that the government is now endeavoring to settle this question by proper means, which questions it hopes to see satisfactorily terminated, always relying upon the patriotism and devotion of the citizens for any other emergency when it may be necessary to appeal to those noble sentiments. God preserve you.

JOSÉ MAN'L TIRADO.

True copy:

F. BARRIGA ALVAREZ,
Chief Clerk.

LIMA, *September 21, 1852.*

The North American ship (*Manlius*) appeared off the island of Lobos de Fuera on the 12th instant, having anchored to the leeward of the common anchoring ground. Her captain, Mr. Baker, informed the authorities stationed at said islands of Lobos that he came there from Acapulco, and that he had received a letter from the owners of the vessel residing in Boston, Massachusetts, dated in the month of June, ordering him to sail immediately for those islands to take a cargo of guano, which letter apprized him that fifteen vessels had sailed from the United States for a similar purpose.

The captain likewise told a person at the islands, privately, that he had been assured he should meet at the islands, besides the other vessels which would go there to ship guano, the United States frigate "*Raritan*," to give them protection.

This incident, which is nothing more than the result of preparations made in the United States by persons who consider themselves authorized to take guano from those deposits without the permission of the Peruvian government, under whose undisputable dominion and possession they are and have been for years, has induced the government, upon the consideration that the ship "*Manlius*" has undertaken the voyage under the erroneous impression that those islands were not the property of Peru, to resolve, in order that the vessel may not be baffled in the objects of her voyage, that she shall be chartered in Callao by any of the houses for the consignment of guano, and to that effect it has issued the order, a copy of which I enclose to you.

I am likewise ordered by the government to inform you that the same course will be followed with respect to other vessels which, under similar circumstances, and in consequence of mistaken ideas pro-

mulgated during the last few months in some of the ports of the United States, sailed from said ports to the islands, unaware that it is prohibited to them to load there, and which shall comply with the notification to leave those waters and refrain from insisting to take guano, as in the case of the "Manlius," whose captain showed, in good faith, that he was ignorant of the prohibition.

The chargé d'affaires will recognize in this proceeding the consideration which the government has for the interests of United States citizens, notwithstanding that for a number of years past acts of sovereignty have been exercised by the nation in order fully to sanction its dominion over the Lobos islands, and the right it has had to prohibit foreign traffic at those islands by various regulations of its own which have been applied to vessels of other nations, especially the commercial regulation of November 6, 1833.

It is to be hoped that the measures which the government of the United States shall adopt in support of international justice, and of the friendship existing between the two governments, strengthened by recent treaties, will put an end to these attempts to take guano from the Lobos islands without the knowledge and permission of the Peruvian government. The government has no doubt that you, the organ of these friendly relations, will continue in those honorable exertions which the government acknowledges you have hitherto made in order to convince the cabinet at Washington of the established rights of Peru over the Lobos islands, and to obtain from said cabinet at Washington the immediate adoption of these measures.

I have the honor to remain once more your very obedient humble servant,

JOSE MAN'L TIRADO.

The CHARGÉ D'AFFAIRES OF THE UNITED STATES.

TREASURY DEPARTMENT,

House of the Supreme Government at Lima, September 17, 1852.

The North American ship "Manlius" is expected to arrive at Callao in ballast, from day to day, from the Lobos islands, and the government directs that as soon as the vessel comes to anchor you will get her chartered on account of the consignment in your care, in order that the same may take on board a cargo of guano, which she will ship at the Chincha islands. I communicate this to you in order that you may be pleased to direct the execution of the same. God preserve you.

NICHOLAS DE PREROLA.

The above is a copy of a communication sent this day to the consignees of guano at this capitol.

True copy:

LINO MARIANO BARRERA,
T. BARREGA ALVAREZ.

LIMA, *September 23, 1852.*

I have received the note which your excellency addressed to me on the 21st instant, enclosing a copy of the circular addressed by the Peruvian government, on the 17th, to its prefects and to its agents in foreign countries, respecting "the last news received from the United States that vessels were being freighted in that country to take guano from the islands of Lobos."

As I have received no communications from the government of the United States upon the subject, I cannot say whether the news referred to is correct or not; but I certainly would be unwilling to place implicit reliance upon statements contained in newspapers, or feel myself justified in accepting as official any letter or other document published therein, purporting to have been written by the Secretary of State or other officer of the government.

Such statements, although sufficient to excite the public mind in countries where the press is free, must be received with caution by those who have charge of the interests of nations, and whose duty it is to preserve harmony in the relations between them; and I am gratified, therefore, to find that the circular above mentioned has been addressed by the Peruvian government to its prefects and agents in that spirit. I think it calculated to restrain the over-zealous, and to prevent them from anticipating events.

Your excellency also expressed the regret felt by the government that certain "publications had appeared in the periodicals of this capital containing premature and imprudent assertions, and which, as I [you] know, it has no legal means to prevent." I am aware that it would be extremely dangerous in a country possessing liberal institutions, were power given to the government to interfere with or control, at will, the liberty of the press; but even in those countries where the people enjoy the greatest freedom of speech and publication, there are occasions when the just hand of the law may be used to restrain licentiousness. And that power, it seems to me, is implicitly given to the executive of Peru by the 1st and 27th sections of the 87th article of the constitution of the republic, when publications appear, the avowed object of which is to excite popular commotions and outrage against life and property.

I have the honor to remain, &c.,

J. RANDOLPH CLAY.

LEGATION OF THE UNITED STATES,
Lima, September 25, 1852.

By a note of his excellency D. José Manuel Tirado, minister of foreign affairs, dated the 21st instant, the undersigned is informed that the ship "Manlius," Baker, master, of Boston, anchored at the island of Lobos de Afuera on the 12th of this month, having gone there from Acapulco, by order of her owners, to take in a cargo of guano. His excellency further states that Captain Baker told a per-

son at the islands, privately, that he had been assured he should meet other vessels, which would go there to load guano, and also the United States frigate "Raritan," to give them protection.

This incident, his excellency supposes, is the result of preparations made in the United States by persons believing themselves authorized to take guano from those deposits without the permission of the Peruvian government, under whose indisputable dominion and possession they are and have been for ages, has induced the government—considering that the ship "Manlius" made the voyage under the erroneous impression that those islands were not the property of Peru—to resolve, in order that the vessel may not lose her voyage, that she shall be chartered in Callao by one of the houses for the consignment of guano, and, with that intent, had issued the order, a copy of which was enclosed in his excellency's note.

His excellency informed the undersigned, in continuation, that, by order of the government, the same course will be followed with respect to other vessels which, under similar circumstances and in consequence of the mistaken idea propagated during the last few months in some of the ports of the United States, may have sailed for the islands, being unaware that it is prohibited to load there, and which shall comply with the notification to leave those waters and refrain from insisting to take guano, as in the case of the "Manlius," whose captain showed, evidently, that he was ignorant of the prohibition.

His excellency the minister of foreign affairs is already aware that the undersigned has received no information or instructions from the government of the United States in reference to the islands of Lobos. The undersigned does not know the motives which influenced the owners of vessels in the United States to charter them to take guano from those islands. He has only the assertions contained in newspapers to found an opinion upon, and he is not disposed to accept them as authority; nor is he inclined to give entire credit to the statement, "communicated privately to a person at the islands," that the captain of the "Manlius" would meet the "Raritan" frigate there to protect his vessel and others whilst loading. The undersigned must consider this last, together with whatever may have appeared in periodicals or in private letters, as mere *report*, until he shall receive a confirmation of the same from his government, or official communications from it, to that effect.

Entertaining the hope that the question will be satisfactorily arranged between the two countries, he takes pleasure in admitting that the decision of the Peruvian government in the case of the "Manlius" manifests that spirit of conciliation and friendship which should always distinguish the intercourse between nations professing the same principles of liberty and philanthropy, and whose relations have always been so intimate and mutually advantageous.

The undersigned avails himself of this occasion to offer to his excellency D. José Manuel Tirado the assurance of his most distinguished consideration.

J. RANDOLPH CLAY.

Mr. J. J. de Osma to the Secretary of State.

[Translation.]

WASHINGTON, October 7, 1852.

The undersigned, envoy extraordinary and minister plenipotentiary of Peru, has, on taking charge of this legation, made himself acquainted with the contents of the note which his excellency Mr. Webster, Secretary of State of the United States, was pleased to address, on the 21st of last August, to D. Juan Y. de Osma, then chargé d'affaires of Peru, in reply to communications which the latter had written to him under the respective dates of June 25, July 3, and August 9, relative to the right of sovereignty of that republic over the Lobos islands; and although at the conclusion of the note aforesaid, in expressing the determination of the President to send ample instructions on the subject to the chargé d'affaires of the United States at Lima, his excellency the Secretary of State seems to intimate that it was the intention of his government to transfer all future discussion of the matter to that place, the undersigned would nevertheless think he had disobeyed the orders he had received if he were to allow some of the assertions contained in Mr. Webster's note to pass without reply; and therefore he takes the liberty of calling the attention of his excellency the Secretary of State to this question, with a view of setting forth correctly several facts which, in his opinion, have been quoted in that note with little precision, in order that his silence under these circumstances may never be taken as an evidence of acquiescence on the part of Peru in allegations which she cannot admit, against the indisputable rights that have belonged to her since she declared herself an independent nation, which rights she is bound to maintain.

Before all, the undersigned must express to his excellency the Secretary of State the satisfaction with which he has seen the determination of this government—a determination taken in conformity with the stipulations of the treaty lately concluded between the two countries—to refuse its protection to those private individuals who may venture to go to the Lobos islands to procure guano in defiance of the prohibition established long time since by the laws of Peru, and the instructions which have been sent in consequence to the naval forces of the United States in the Pacific; which instructions the undersigned hopes will reach in time to prevent any collision that might disturb the good relations and compromise the interests of the two nations. The above mentioned determination will be the much more appreciated by the government of the undersigned, as it will serve to confirm it in the opinion it has always entertained, that the government of the United States would examine into and settle any question or difficulty which might be stirred up between them, without taking into consideration the relative strength or weakness of the parties; while it will moreover increase the confidence the Peruvian government has cherished, that a sister republic, whose moral, and even political, obligations in regard to the South American States are greater

than those of any other nation, in consequence of the position she has taken and aspires to preserve in the world, cannot have so little regard for the rights of Peru as to go so far as to violate the principles of international law for the sake of a national interest badly understood.

The undersigned finds himself under the necessity of attributing the opinions advanced by his excellency Mr. Webster on this subject, or rather the doubts he has manifested concerning the perfect right of sovereignty of Peru to the Lobos islands, to the want of correct or complete information relative to the discovery of those islands, and the free possession and exclusive jurisdiction exercised by Peru over them; and therefore he looks upon the assurance which his excellency the Secretary of State has been pleased to give in his note, that his government would examine with the most serious and kindest attention such facts and arguments as may still be advanced, and which had not yet been brought under consideration, as an unmistakeable announcement that the government of the United States will finally recognize the justice of the pretensions of Peru in this question.

Peru does not claim the sovereignty of the Lobos islands on account of their proximity to the coast; Peru derives her right from the discovery of those islands, from her possession of the same, which has never been abandoned, and from occupation. Nevertheless, the undersigned cannot omit showing here, notwithstanding the respect to which the opinions of so eminent a statesman as Mr. Webster are entitled, that Peru might base her right to the islands aforesaid upon grounds arising from her respective geographical position; and that, in such case, he could find in the United States precedents to quote and respectable American authorities to back him. The Lobos islands are not situated, strictly speaking, in the high seas, or in the open sea; they lay in a species of gulf, formed by the sea, connecting with the coast of Peru, on leaving the *Punta de Aguzas*, in a southerly direction; so that, taking the meridian of the *Punta de Aguzas* as the natural boundary of the Peruvian waters in these latitudes, as that is the extreme westerly point of the contiguous coast, the islands are comprised within said meridian. It is owing to that situation that vessels steering for the coast of Peru from the north, must necessarily see those islands, as it was the case with the conqueror, Pizarro, on the occasion of his first voyage, and that any vessel sailing in the direction of said islands must first steer for and approach the neighboring coast. Consequently, in alleging the situation of these islands as the basis of her jurisdiction, Peru would find herself precisely in the same position as the United States, in claiming jurisdiction in the waters between the Point of Montauk and the mouth of the Delaware, or between the extreme southern cape of Florida and the mouth of the Mississippi. The rule, that maritime jurisdiction does not extend beyond the distance of cannon shot, or of three miles from the coast, the force or validity of which the undersigned does not propose to discuss at present, is not applicable to the question which has given rise to this correspondence; the point at issue in the latter concerning, not merely the jurisdiction over the things that are to be found at sea, but the sovereignty of a territory

more or less extensive, acquired by so many respectable and valid titles, at least like the one which in other cases grows out of the proximity of three miles. The Lobos islands were discovered, and so called, by Francisco Pizarro, in his first voyage to the coast of Peru, in 1526, the same in which he proceeded as far as the river *de Santa*, taking possession, according to the usages of that time, of all the territory which he discovered in the name of the king of Spain. Shortly after the conquest of Peru had been completed, the Spanish government ordered it to be divided into "*intendencias*" and "*coregimientos*," (commissary departments and mayoralties;) and in establishing the *coregimiento de Saña*, it officially designated the Lobos islands as comprised within that jurisdiction. From that period Spain maintained possession of the islands aforesaid, which were frequented by fishermen of the coast, in the pursuit of their vocations, making their home there during the favorable season of the year, and which were likewise resorted to by some vessels that went there to procure guano for the agriculture of the neighboring provinces of Trujillo, Chicayo, and Lambayeque; for, since the time of the Incas, guano had been used as a manure throughout the whole of the Peruvian coast. The Lobos islands, although constituted of barren rocks, could be made useful in some degree, and the inhabitants of Peru have occupied them without interruption, with the only two objects for which they had any value: fishing and the extraction of guano. The possession and occupation of these islands was therefore founded upon a real and legitimate title, which title was strengthened by the use of it. But even this use was not left by the government to the discretion of private individuals; for according to the Spanish regulations, there were vessels especially fitted out for this business, which were obliged to procure a suitable license whenever they sailed for these islands, the latter being considered as belonging to the national domain. In alluding to the extraction of guano in these islands, the undersigned deems it his duty to remove, at once, a false impression under which his excellency Mr. Webster appears to labor, in stating that Captain Morrell was the first to discover the existence of guano in them. This discovery of Captain Morrell has no better foundation than the discovery of the islands by the same individual. Without citing any other proofs, the undersigned, who has passed close by these islands, can assert, from his own knowledge, that it is impossible to avoid noticing the guano on nearing them, seeing that the whole surface is covered with this substance. Nor is there anything, besides, in the simple narrative of Captain Morrell, in regard to his passage by the Lobos islands, which appears to indicate a pretension of having made any kind of discovery in the true meaning of the word.

All nations have admitted, as a principle not to be disputed, that discovery constituted the original title of sovereignty in American countries; and that the nation by which the discovery was made had an exclusive right to acquire the discovered territory. Agreeably to this view of the matter, the right of sovereignty to the Lobos islands which Spain has always maintained until the separation of Peru, cannot but be recognized as valid on account of its origin; and this right

could only be questioned or disputed subsequently when some act had been consummated, tending to prove that Spain had either abandoned or renounced her sovereignty, or any fact had transpired by which any other power had acquired or occupied said territory. But so far from evincing a disposition to abandon the smallest portion of it, Spain sought to preserve, in its integrity, her dominion over the continental possessions of the South sea, and over all the adjacent islands; prohibiting foreign vessels from touching there ever since 1540, and maintaining with unparalleled constancy her exclusive right to the trade, navigation, and fisheries of those coasts and islands; causing the same to be recognized in the greater portion of the treaties she has concluded from the commencement of the 17th century. England, when the United States had not as yet been emancipated from her, recognized in her conventions with Spain the right of the latter to all the islands contiguous to the continent in the South sea, pledging herself that her subjects should not navigate within ten leagues distance of the coasts and islands already in possession of Spain. The undersigned does not know of a single act susceptible of proving that the last mentioned nation had, during her dominion in Peru, suspended in favor of another the laws she had established in order to preserve her exclusive right to the commerce, navigation, and fisheries of those adjacent coasts and islands; nor is he aware of any particular concession ever having been made in favor of the United States in this respect, nor that she had knowingly consented or tolerated that vessels of the latter power should have access to the Lobos islands, or any other islands which she possessed in those seas, for the purpose of fishing or for any other object. No act of this kind having been consummated on the part of Spain, the casual or accidental arrival of United States vessels at Lobos, or the fact that some private individuals may have fished without authority in the adjacent waters, if this has been ascertained to have been the case, are not sufficient causes to give any species of right to the United States over those islands, nor could they have more power to invalidate the right of dominion, on the part of Spain, than the clandestine violation of any law whatever could have for abolishing said law.

There is but one act which has extinguished the right of Spain to the Lobos islands, and that is the independence of Peru. The states which were formed from what constituted the Spanish colonies in America, and the nations that have recognized those States as independent or sovereign States, have admitted the *uti possidetis* of the Spanish dominion as constituting the title of their respective rights to the territory, so that each of those States has claimed for itself all that belonged to each of the great territorial, political, or administrative divisions, which Spain had established, and out of which the first states were respectively created. The republic of Peru on her own part declared, that all the viceroyship of Peru belonged to her, which comprised the islands we are discussing about; and no nation disputed this right to her, nor exacted that she should specify the provinces, possessions, territories, or islands, corresponding to the ancient viceroyship which she thought of appropriating to herself. By the act of her independence, Peru acquired dominion over the Lobos islands; or rather, she

became the substitute of Spain in those rights which the latter nation held in said islands, and in those other islands situated along the coasts of the republic. The latter, since her independence, has not only considered the Lobos islands as her property and kept possession of the same, but has performed therein repeated acts of sovereignty; such as the act prohibiting foreign vessels coming from foreign ports from anchoring there; that prohibiting foreigners from fishing in these waters, or thereabouts, reserving that privilege exclusively for her own citizens; that prohibiting the exportation of guano deposited in said islands; that of passing judgment upon and condemning, according to her own laws, such vessels as have been found violating the aforesaid prohibitory regulations, as it was done in the case of the "*Campeadora*," "*Hibernia*," "*Catalina*," "*Adelina*," and others; that of causing the land to be measured, examined and surveyed, and charts to be drawn up of the same; that of detailing ships of war for the defence of said islands, and of enforcing the observance of her fiscal laws; and, finally, that of establishing authorities.

In view of all these facts, which have transpired in the course of a great many years, no nation has remonstrated or called into question the rights of Peru until lately, when the impulse which was given to the guano trade and the value of guano as an article of manure excited the cupidity of some speculators in England, who, by misleading public opinion with false intelligence, alleging at times the recent discovery of the Lobos islands, asserting at others that some of them had hoisted the British flag there since 1806, maintaining that said islands were situated in the open sea, always denying the right of jurisdiction on the part of Peru, and showing that the immense deposits of guano which those islands contained rendered their possession or cultivation a matter of the greatest importance to England, succeeded in attracting public attention and in making those rights which Peru was tranquilly enjoying, and had exercised without contradiction until now, the subject of controversy with the press and even in Parliament. Numberless petitions were addressed to the British ministry, asking that protection might be extended to those vessels which the very parties who had been the cause of this sudden excitement intended to send to the Lobos islands in quest of guano; but her Britannic Majesty's government refused to accede to a measure which, under the circumstances of the case, was at least precipitate, and having examined the question, it declared that the islands had been and still were the property of Peru. The question also attracted attention in France, although not to so great an extent as in England, and various representations were made to the French government by owners and masters of vessels, praying for protection in behalf of such of the latter as were fitting out for the purpose of exporting guano from Lobos. The French government refused to comply with these requests, declaring that the islands were under the jurisdiction of Peru.

When this subject had nearly become devoid of interest in Europe, and at the very moment, if the undersigned be not mistaken, when the aforesaid governments were declaring their respective convictions that the Lobos islands belonged to Peru, some persons in the United States addressed the Department of State for the purpose of ascertain-

ing whether they would be protected in their projected speculation of going to ship guano at Lobos, and received the desired assurance in a letter, which, although it may be considered as a private one, seeing that it was not written with a view of its being made public, the undersigned takes the liberty of recalling to mind, in order to show, as a very remarkable circumstance, that in it his excellency the Secretary of State did not base his offer of protection upon the right with which he wishes to invest American vessels in his note of the 21st of August; and that while declaring in said letter that the department did not know whether the Lobos islands had been discovered or occupied by Spain or by Peru, he also admitted that in the event of their having been discovered or occupied either by Spain or by Peru, the government of the latter state would have the right to exclude from said islands the vessels and citizens of other nations. How is it that the two most powerful maritime nations of Europe, as much interested as the United States in the navigation of the Pacific, and equally so or more in the guano trade, have been better informed than this government in regard to the title of Peru to the sovereignty of the Lobos islands, or have considered said title so indisputable at first sight, that they have not hesitated in freely and generously recognizing the same? The undersigned is very far from supposing that the rights and interests of the South American people can be a subject of greater importance to England and to France than to the United States; much less can he harbor the idea that, in their international relations, the former are not to expect as much good will on the part of the United States as they are entitled to from the great European powers.

In the case now under consideration, Mr. Webster, in his communication of the 21st of August, comparing the conduct of this government with that of her Britannic Majesty's government, endeavors to account for the difference on the ground of the different position in which two governments find themselves in regard to Peru; and alleging, in behalf of the United States, certain special rights to the Lobos islands, he pretends that American vessels have the privilege of shipping guano from those deposits: first, because United States vessels have been accustomed for a long time back to fish among those islands without interruption; and secondly, because in 1833, when Peru prohibited foreign vessels from fishing along its coasts and islands, those of Lobos included, the United States remonstrated against the prohibition, and that Peru yielded to that remonstrance or reclamation.

Abandoning the point of the question, under the aspect that the islands, on account of their sterility, their being uninhabited and uninhabitable, are the common property of all nations, the undersigned is of opinion that all that has been advanced by his excellency Mr. Webster, not for the purpose of denying the right of jurisdiction and of property to Peru, but in order to establish the right on the part of the United States to share in the deposits of guano contained in those islands, reduces itself to the two arguments specified above.

The undersigned has reason to believe that his excellency Mr. Webster has not thoroughly informed himself as regards the severity with which the Spanish government carried out its prohibitory laws,

to prevent foreign vessels from fishing on the coasts and islands of Peru, when he asserts that citizens of the United States have been employed for half a century in pursuing that vocation among the Lobos islands and their vicinity; and he further thinks that it would be difficult for the Secretary of State to cite a sufficient number of cases of vessels having gone to fish in those islands in order to establish a proof or presumption that Spain had consented to allow such privilege to be exercised, and that, in reality, United States citizens had enjoyed the same peaceably and without interruption under the Spanish dominion. Open and continuous tolerance on the part of Spain could alone be adduced as constituting a kind of possession in regard to the practice of fishing; for, as the undersigned has intimated before, rare, accidental, and isolated instances of American vessels resorting to those localities cannot constitute any species of right. The meeting of United States vessels on those coasts first occurred during the war of Peruvian independence—that is to say, from 1820 to 1826—and during that time, whether it was owing to the impossibility which the government labored under to give its attention to subjects of secondary importance, or to the natural relaxing of the laws, which is noticed in all periods of political commotions, foreign vessels, and American vessels among the number, began to apply themselves to fishing on the coasts of Peru and the islands appertaining thereto, *procuring, first of all, a license from the authorities of the ports*, which was issued to them without difficulty, as it is shown in document No. 1, which the undersigned subjoins. But this very act of soliciting a license from the Peruvian authorities shows that the American vessels did not consider themselves as having a right to pursue that vocation freely, but that they fished in virtue of a special grant from the government of the country. It may be that at that time some vessel or other may also have ventured to fish without a license; the undersigned is not cognizant of the fact, although he thinks it improbable, seeing that all vessels were under the necessity of touching at some of the ports of the republic, and that there was no occasion of their rendering themselves liable to punishment for violating the law when these licenses could be easily obtained without paying any duty whatever. But even supposing that this may have occurred, it would be no evidence of Peru having given her consent, as at that time she was solely occupied in fighting for her independence; nor does the undersigned believe that such acts could, with any show of justice, be adduced as establishing rights against those of a State which was not in a condition to defend its own.

The practice of granting permission to foreign vessels to fish in the islands and on the coasts of the republic was continued until the complaints of some of the citizens of the country, relative to the abuses committed by said vessels, compelled government to issue the decree of September 6, 1833, entirely interdicting fishing to all foreign vessels, and cautioning the captains of the ports not to grant any licenses in future, except to national vessels, according to the practice established in former times. This decree was not unforeseen and sudden, as his excellency the Secretary of State designates it in his communication; it was contemplated and resolved upon in consequence of

complaints laid before the government by citizens of Peru, and of inquiries made by the competent authorities, as may be seen by the documents which are added to this note, marked respectively, Nos. 1, 2, and 4.

Mr. Larned, at that period chargé d'affaires of the United States, in Lima, addressed a communication to the Peruvian government, under date of September 30, not protesting against the decree in the language which his excellency the Secretary of State wishes to make it appear to have been employed, when he uses the word (*remonstrance*) which gives a character to Mr. Larned's communication that did not belong to it; and much less alleging rights to fish acquired by citizens of the United States, nor questioning the rights of the Peruvian government to establish said prohibition; but *asking*, or *soliciting as a favor*, that the decree might be taken into reconsideration, and that United States citizens *might be allowed* to continue in the pursuit of that vocation; because, as he said, the granting of the permit could not redound to the injury of native born Peruvians, on account of the extent of the coasts, and the various ports, creeks and bays, which Peru possessed. Mr. Larned's note, which is herewith enclosed marked No. 5, shows distinctly that the United States did not consider themselves as having a right to fish on the coasts and islands of Peru, because it is impossible that an agent, jealous of the rights of his country, who had resided in Peru for many years, and who must have been better acquainted than anybody else with all the facts and circumstances which could have served to support his demand, could have forgotten to plead such right. On the contrary, Mr. Larned recognizes and admits, in his note, the exclusive jurisdiction of the Peruvian government, since he asks the latter to issue some regulations, in order to prevent the abuses which vessels engaged in fishing might commit, and begs that American vessels may be permitted to pursue that vocation under the rules which the Peruvian government may establish. Mr. Larned does not make any reclamation, remonstrance, or protest against the decree of the Peruvian government; the only thing he does, is to state that the measure adopted by said government, indicates but little deference for a sister republic which entertains the most friendly disposition towards Peru; and it is a fact worthy of note, that Mr. Larned received no instructions from the government of the United States to enter protest, since his excellency Mr. Webster, acknowledges that he had no such instructions when his note of September 30 was written; and if he had received them subsequently, he would not have failed to communicate the fact to the Peruvian government in some of his later communications, insisting upon the annulment, modification or alteration of the aforesaid decree.

The Peruvian government paid due attention to Mr. Larned's note, and upon a further examination of the subject, the President gave a decision on the 5th of March, 1834, through the minister of finances, refusing to make any alteration in the decree of September 6, ordering the provisions of the same to be carried out, and directing the aforesaid decision to be communicated to the chargé d'affaires of the United States. This decision, a copy of which the undersigned encloses, marked No. 8, was forwarded on the 13th of March, by the min-

ister of foreign relations, to Mr. Larned, as a reply to the note of the latter of September 30, 1833. Since that date up to the present day the Peruvian government has received no other communication upon the subject either from the government of the United States or from its agents; and from that time, also, no American vessel, nor the vessels of any other nation have been allowed to fish on the coasts and islands of Peru, those of Lobos not excepted. His excellency the Secretary of State remarks that he is not aware that the government of Peru had replied to Mr. Larned, and investing this doubt with the character of a certainty, he seeks to base upon the silence of Peru the assumed right of American vessels to frequent the Lobos islands. May not the undersigned be allowed to cite the remarkable silence of nineteen years which the government of the United States has observed in regard to this matter as a proof that such right has not existed, and that the sovereignty of Peru has not been disputed by any government? The interruption of the fishing privilege took place in consequence of the prohibitory laws of the government of the republic; and although his excellency Mr. Webster thinks that such an occurrence would have called the attention of this government to the sovereignty of Peru over the Lobos islands, the fact is that Peru exercised this sovereignty without the government of the United States thinking itself entitled or legally justified to call it into question. In the present case it does not matter whether Mr. Larned had or had not communicated to his government the reply which he received from the minister of foreign relations of Peru on the 13th of March, 1834. If the United States had had any right to fish off the islands of Peru this government would have considered the subject of sufficient importance to have enjoined Mr. Larned to insist until he had obtained the repeal of the prohibition, and it would at least have instructed him to keep said government informed in regard to the winding up, or the result of the negotiation. But even supposing for a moment, and by way of elucidating the matter, that Peru had not at that period established her exclusive right to the fisheries, and that she had granted to American vessels the privilege sued for by Mr. Larned, the right of fishing could not have conferred upon the United States, as Mr. Webster pretends, the right of taking away guano, or of appropriating to themselves the territory for any other use. His excellency the Secretary of State cannot have forgotten that, in a famous negotiation, the United States have maintained the principle that the fisheries might be free or common, and that at the same time the right to the territory might be exclusive; or, what is the same, that the right of fishing which the subjects of a nation might possess did not circumscribe in other respects the jurisdiction of the sovereign of the coasts or shores where fishing was carried on. Besides the decree of September 6, 1833, prohibiting fishing, there is another, and a more explicit act of the Peruvian government of that period, in which its jurisdiction over the Lobos islands is confirmed, which act was admitted by the United States. On the 6th of November, 1833, there was enacted the first distinct law upon commerce in general that Peru had adopted since her independence; and in this law, called commercial regulations, there are two articles, a copy of

which his excellency the Secretary of State will find annexed hereto, in one of which were designated the ports accessible to foreign vessels proceeding to Peru from foreign countries; while in virtue of the other such vessels were prohibited from entering the other different ports, *or the ports of the Lobos islands, Huanape, Huanra, Hormigas, and the other islands known by the name of Guano Islands.* This regulation was transmitted by the minister of foreign relations to all the public foreign agents residing in Lima, together with a note in which it was stated, with uncommon deference, that this being the first law of the kind which had been enacted in Peru, and the government being desirous to encourage, by the most proper means, traffic and friendly intercourse with other nations, it would receive with the greatest pleasure any observations which said agents might be pleased to make on the subject of said regulation. Mr. Larned replied by means of a communication addressed to the minister of foreign relations, showing himself favorably disposed towards the new law, stating that his government would see with satisfaction the facilities thus afforded to commerce, and expressing his confidence that these facilities would in future be increased. On that occasion Peru was exercising her sovereignty over the Lobos islands with energy, having passed a law prohibiting all vessels coming from foreign parts from anchoring there; and the United States not only did not protest, but the American representative evinced his approbation officially in regard to this very law. Nor is there any contradiction in the conduct of Mr. Larned on the two occasions which the undersigned has just mentioned; seeing that, in September, what the chargé d'affaires of the United States required of the Peruvian government was simply that it might continue to grant permits to American vessels to fish on the coasts and islands of the republic, whilst, in November, he recognized the exclusive sovereignty of Peru over the Lobos islands, and those other islands that have been mentioned, the sovereignty of which he had never pretended to call into question.

In regard to all these facts, neither of the parties was then biased by considerations of the value which the Lobos islands possessed as deposits of guano; for, although the manure was used on the coast of the republic, it had not yet become an important article of exportation. The Peruvian government prohibited fishing off the islands, with the very justifiable object of preserving this branch of industry exclusively for national vessels, and prohibited those vessels coming from foreign parts from anchoring there, in order that the islands might not be converted into headquarters for smugglers; a powerful reason this for inducing Peru to seek to preserve at all times her exclusive jurisdiction over said islands, and for showing herself always anxious to defend the same.

In 1841 guano began to be exported to Europe and to the United States; and the Peruvian government, as proprietor of the deposits which were to be found on the coast and islands of the republic, prohibited by its decrees of March 2 and May 10, 1842, both foreign and national vessels from exporting guano without having previously obtained a licence from said government: and from that time the latter did not allow guano to be shipped except from the islands of

Chincha, suspending the permit which it had granted before to national vessels to ship guano at the Lobos and other islands. These decrees of the Peruvian government, which have been strictly observed for the last ten years, constitute other acts of sovereignty and jurisdiction exercised by Peru in the Lobos islands. The United States did not protest against those decrees; and although his excellency Mr. Webster does not affirm that such would have been the case had those decrees been made known to the American government, he asserts that the latter did not become acquainted with their existence until lately, when they appeared among the documents presented to the British Parliament on the subject of the Lobos islands. The undersigned regrets more than any one else the scarcity of information from which the Department of State has suffered in regard to this matter, and which has been the cause of serious injury done to Peru, and about which he will probably have occasion to speak in future; but he begs, on his own part, to assure the Secretary of State that these decrees could not but have been known to the *chargé d'affaires* of the United States at Lima, because they were published in the Register of Laws and other official acts of Peru, of which Mr. Pickett, as a public agent, was bound to take notice; and because the latter could not have done otherwise than to have procured all the necessary data in connexion with a subject which, at that time, engrossed a great deal of public attention in Lima, especially among foreigners. The undersigned has yet other reasons for believing that all the Peruvian laws relative to guano, the prohibition to ship guano in the islands without a permit, and the subsequent decrees of 1842, have been made known to the government of the United States before now. In 1850, Mr. Clayton, the Secretary of State, addressed some communications on the subject of the guano trade to this legation, after having had several official conversations with Señor Tirado, then minister of Peru, the object of which, on the part of the former, was to induce the Peruvian government to abolish the restrictions imposed on this traffic in 1842, asking that the guano might be sold at a fixed price in the islands; and in the treaty of commerce and navigation which was concluded that very year, and which was not ratified by Peru, Mr. Clayton took care to insert, and actually did insert, an article, stipulating for an equality of treatment in behalf of American citizens and American vessels in the event of guano being sold in the islands. Moreover, in the message of the President of the United States to the Houses of Congress, in December, 1850, speaking of the importance of the guano trade, these words occur: "I am persuaded that in removing any restraints on this traffic the Peruvian government will promote its own best interests," which must have alluded to the decrees of 1842, because the only restraints now existing are those which were imposed by said decrees. These facts prove very clearly that the prohibitory laws of Peru had fixed the attention of the government of the United States before now; and that two years since the latter had no right to protest against those prohibitions; because if such right had existed, why did it beg that the guano might be sold in the islands, or why did it stipulate for an equal treatment in behalf of American citizens and

American vessels, in case the Peruvian government should alter its system of exportation?

The government of Peru was not satisfied with the simple prohibition of 1842 in regard to the Lobos islands; but thinking that their situation rendered them very much exposed to be encroached upon by any vessels that might wish to attempt to obtain guano clandestinely, it has had from that time a ship of war stationed there, and cruising about, in order to enforce respect for the prohibitory laws.

In 1846 and 1847, with a view of ascertaining as correctly as possible the extent of the guano deposits, their respective qualities, and other particulars concerning the trade in this article, the government appointed a commission of engineers to reconnoitre all the islands, from those of Lobos to those of Chincha, to draw up plans of the same, and measure the deposits of guano. And subsequently, in pursuance of information received from said engineers, and in order that the islands might be more strictly watched over, the government determined to place them under the immediate jurisdiction of the authorities of the nearest provinces to the coast; for, until that time, they had all been dependent on the authority of the commandant general of marine.

These are the repeated acts of sovereignty which the government of Peru has performed in the Lobos islands; in mentioning them the undersigned does not mean to submit the validity of the titles of Peru to the decision of this government, but he brings them forward to show that they are of such nature that either of them would suffice to give to the government of Peru as indisputable a right to the islands aforesaid as it has to the rest of the territory of the republic. The undersigned will only add, that the actual occupation constitutes of itself a legitimate title of the sovereignty of Peru, since that act was accomplished without detriment to any other nation; laying aside entirely the fact of the discovery, and the consideration, whether the islands had or had not been abandoned before now; and that, consequently, Peru has a right to exclude the vessels and citizens of other nations from said islands unless they submit to the conditions which she may think proper to impose upon them.

The undersigned fears that he has perhaps trespassed too much upon the time of his excellency the Secretary of State; let, however, the importance of the subject, and the necessity under which he has found himself to perform the duties imposed upon him by his official position, serve as his excuse. The point at issue in this question is not a few tons of guano: there are involved in it the rights of a nation, small, but entitled to justice on the part of other nations, and especially to the good faith and deference of all. The undersigned, therefore, concludes, by asking his excellency the Secretary of State, in the name of his government, that the government of the United States may be pleased to adopt all such measures as it may deem proper in order to prevent American vessels from going to the Lobos islands, or to those other islands belonging to the republic of Peru, without permission of that government; because any transgression of its laws would draw upon the individuals guilty of such the penalty designated by said laws, and might be the cause of engendering senti-

ments that would be at variance with the good harmony which happily exists between the two countries.

The undersigned renews to his excellency the Secretary of State the assurances of his high esteem and most distinguished consideration, subscribing himself his obedient servant,

JOAQ'N Y DE OSMA.

The most excellent SECRETARY OF STATE
Of the United States.

Mr. Conrad to Mr. J. J. de Osma.

DEPARTMENT OF STATE,
Washington, October 9, 1852.

The undersigned, Acting Secretary of State of the United States, has the honor to acknowledge the receipt of the note of Mr. de Osma, envoy extraordinary and minister plenipotentiary of the republic of Peru, of the 7th instant, containing an exposition of the claim of that republic to the Lobos islands.

The undersigned has not yet had time to examine this paper with the attention which its importance deserves, and will defer replying to it until this government shall be possessed of all the information on the subject it will be in its power to procure.

In the meantime, the undersigned is directed to call the attention of Mr. de Osma to another matter connected with this subject. Mr. de Osma is aware that the order which had been given to the commander of the naval forces of the United States in the Pacific, to protect American vessels in the exercise of the right to take guano from the Lobos islands, was subsequently revoked.

The undersigned has already had the honor to explain orally to Mr. de Osma, that this government had not intended by the revocation of that order to abandon its own claim or to admit that of Peru. But that, as it was alleged that Peru had recently taken possession of the islands and asserted her jurisdiction over them, and as the question was a doubtful one, the proper solution of which depended on facts in regard to which this government was not fully informed, it had to avoid giving any cause of offence to Peru, and possibly interrupting the friendly relations between the two governments, determined to waive the enforcement of any rights it might possess until the question could be fully investigated.

Mr. de Osma is aware, however, that a number of vessels belonging to citizens of the United States have sailed for the Lobos islands under the belief (in part occasioned by the act of this government) that they would be protected in their right to take guano therefrom. What is to be done with these vessels? The chargé d'affaires of the United States at Lima has informed this department, in a despatch of the 7th of August last, that they would, at the option of their captains, sail for another destination, or be chartered by the agents of the Peruvian government to carry guano to the United States or England. But

the owners or charterers of these vessels were not induced to send them on this distant voyage merely on account of the freight they might earn; and it is feared that in some cases the freight on the guano at the customary rates will not even reimburse them for their actual outlay, including the charter parties, outfit, &c. Besides, it has been reported to this department (whether correctly or not the undersigned is unable to say) that some of the parties engaged in this adventure, supposing they would be allowed to load with guano on their own account, have made contracts to deliver it at prices much below its ordinary market value.

The undersigned is directed to say to Mr. Osma that this government deeply sympathizes with these persons, and feels it a duty incumbent on it to do all in its power to enable them to realize their just expectations. The undersigned, therefore, begs leave to express the hope that these vessels, that is to say, those which sailed (or had orders to sail, which could not be countermanded before sailing) for the Lobos islands in the interval between the 12th day of June (the date of the letter communicating the order to Commodore McCauley, referred to) and the 24th day of August last, (when the revocation of that order was made known,) will, under all the circumstances of the case, be permitted to load on their own account. The undersigned submits that this concession on the part of Peru would be but a proper return for that comity and forbearance which this government has exhibited in reference to this subject. On the other hand, it must be apparent that, in case these vessels should be prevented by the Peruvian government from taking their cargo, and it should hereafter appear that this was a wrongful act on its part, their owners or charterers would have a claim for indemnity against Peru, which this government would be bound to enforce.

The undersigned would also suggest that such a proceeding, while it would not diminish the desire or the obligation of this government to do full justice to Peru in reference to this question, would, by complicating it with private interests, and the feelings growing out of them, retard, if it should not seriously embarrass, its final and satisfactory adjustment.

The undersigned requests the favor of a speedy answer to this proposition, and avails himself of this occasion to offer to Mr. de Osma a renewed assurance of his very high consideration.

C. M. CONRAD.

Señor Don J. J. DE OSMA, &c., &c., &c.

Mr. Clay to Mr. Webster.

(No. 111.)

LEGATION OF THE UNITED STATES,
Lima, October 11, 1852.

SIR: Mr. William Miles arrived in Lima on the 1st instant, and delivered to me your despatch dated August 30, together with the documents annexed to it.

His arrival had the effect of quieting this excited public, particularly as it was apparent from your note to Mr. Osma of the 21st of August, (published here in translation,) that the government of the United States would enter into negotiations upon the subject of the Lobos islands, and not take possession of them by a *coup de main*, as many supposed would be the case.

The government and people of this republic now confidently hope that the United States will recognize the dominion of Peru over those islands; and they have reason to think so, for the title of the republic to them becomes more manifest the further it is examined into.

From the first moment the news was received in Lima that vessels were being chartered in the United States to take guano from the Lobos islands, my object has been to prevent any collision between them and the Peruvian authorities and forces stationed there. I addressed letters to Commodore McCauley at Valparaiso on the 18th of August and 18th September, urging him to come to Callao in the "Raritan," to consult with me upon the steps most proper to be taken by him under the circumstances, and had prepared a notice to the masters and captains of the vessels referred to, warning them not to attempt to take guano from the islands by force, which I was on the point of sending off, when the receipt of your despatch made it necessary to change somewhat its phraseology. Having done so, I forwarded fifty copies of the printed warning enclosed herewith to the Lobos islands, to be handed to the captains of the vessels as they may arrive; and I trust that it may prevent any attempt on their part to take forcible possession of the guano upon them. This I conceived was the best that could be done, in the absence of a ship-of-war of the United States.

I have been just informed that the Commodore was to leave Valparaiso on the 3d instant. The Raritan may, therefore, be expected to arrive at Callao in a day or two. I shall advise the Commodore to sail immediately for the Lobos islands.

I have never doubted the validity of the claim of Peru to the possession and exclusive jurisdiction in the islands of Lobos de Tierra and Lobos de Afuera, and feel confident that such will ultimately be the decision of the government of the United States, when the question shall be investigated and the proofs shown by Peru duly weighed. And as it is the intention of the President to give the subject a fair consideration, I addressed the note (a copy of which is annexed) dated the 4th instant, to the minister of foreign affairs, in order to give this government the opportunity of exhibiting all the documents and other evidence in its possession bearing upon the subject.

I did so with a view to the prompt adjustment of the question, although it is not usual, in cases of contested title, for the party in possession to be called on to produce evidence to substantiate his right.

Late on the 9th instant I received a note from Mr. Tirado, in which, after stating that the shortness of the time (before the departure of the steamer to-morrow) would not permit him to return an answer containing a thorough examination of the question of title to the Lo-

*See accompaniment to No. 107.

bos islands, he confines his remarks to the correspondence which took place between Mr. Larned and the Peruvian government in 1833, relative to the decree of the 6th of September of that year, prohibiting foreign vessels from fishing and catching seals on the coasts and islands of Peru. As reference is made to this subject in your letter of the 21st of August to Mr. Osma, and also in the instructions contained in despatch No. 30, from the department, it may not be out of place to offer a few observations upon Mr. Larned's proceedings in the matter.

The Peruvian government, after taking the opinion of the Attorney General, issued the decree of the 6th of September, in consequence of the complaint of Nicolas Antonio Dias, a citizen of Peru, against the abuses committed by foreigners in fishing on the coasts and islands of the republic to the injury of its citizens engaged in similar operations.—(See documents enclosed herewith.)

On the 30th of September, 1833, Mr. Larned addressed a note to the minister of foreign affairs concerning the decree; and from the tenor of his despatch No. 86, dated November 8, 1833, to the Secretary of State, it would appear that he probably had held several interviews previously with the Peruvian minister of foreign affairs on the subject.

In that despatch he says: "Although I am aware that the decree prohibiting the taking of seals, &c., will soon become a dead letter, and that it could not be resisted on the score of right, I yet, principally in consequence of a proposition from the minister to this effect, concluded to address him thereon, for he gave me ground to hope that our citizens should be exempted from its operation."

Here, then, is a virtual acknowledgment by the chargé d'affaires of the jurisdiction of the Peruvian nation over the coasts and islands, inasmuch as he admits that he could not resist the decree on the score of right; and it is probable that he made the same avowal to the minister of foreign affairs, since he says that he concluded to address the said note, *principally in consequence of a proposition from the minister to this effect*. Such a proposal would most certainly never have been made to him by the Peruvian minister, unless with the understanding that the right of sovereignty of Peru in the coasts and islands was not disputed. Indeed, the commandant general of the marine, in his note to the minister of war, dated July 6, 1833, gives as one of the reasons for issuing the decree, that it appeared to him indispensable to cut up the abuse in fishing and taking seals by the roots; seeing that, if it were tolerated, they (the Americans) might allege a *right to that national industry*, thereby depriving the State of the duties they ought to pay on the exportation of the skins and oil of the Lobos which they take in their vessels. The right of levying duties presupposes a right of sovereignty; and therefore, in the conferences of Mr. Larned with the minister on the subject of the decree, the right of Peru to the Lobos islands was probably not doubted.

The terms also used by Mr. Larned, in his note of the 30th of September, go far to confirm the supposition that he thought the right of Peru to the islands indisputable.

He says that he had "seen with great regret" the publication of

the decree, "as amongst foreigners, the citizens of the United States are almost the only ones who here pursue this occupation. I cannot but consider this prohibition as particularly levelled at them, and in this light it will undoubtedly be viewed by the government of those States, and therefore be looked upon as a proof of an unfriendly disposition on the part of Peru towards their citizens; more particularly as the pursuit by them of this branch of industry" (catching amphibious and cetaceous animals) "on the shores of Peru can be of no injury to her own citizens, inasmuch as they are not engaged in it, except perhaps to a very limited extent; and if they were to a much greater, the long line of desert coast *possessed by her* and its innumerable creeks, bays, and havens would afford ample room for the whole to follow this harmless avocation with undiminished advantage."

It is evident from this that Mr. Larned considered the Peruvian nation as the proprietor of the soil, and that the citizens of the United States fished and caught seals on the coasts and islands of Peru by *sufferance*, for he only tells the minister that the prohibition would be regarded as a proof of an unfriendly disposition on the part of Peru, and does not declare that it was not authorized to issue it. The terms "unfriendly disposition" are, as it appears to me, only in strictness applicable to cases where the possessors of property inhibit to others the continued innocent use of it.

Moreover, it is to be observed, Mr. Larned does not use the word *protest* in his letter; he says, on the contrary, "I have to *request*, therefore, in the name of my government, that the decree in question may be reconsidered," not rescinded or annulled, "or so far modified as to permit to the citizens of the United States the pursuit of an occupation which they have been *allowed* quietly to follow for a number of years to their advantage, and it is believed without injury to Peru."

The form of a request, adopted by Mr. Larned, is tantamount to an acknowledgment that the coasts and islands were under Peruvian jurisdiction; and the use of the words *permit* and *allow* the continuance of the occupation of fishing and catching seals is an implied admission that the government possessed the right to *prevent* and *obstruct*, at will, the pursuit of it by our citizens. The words import that he was asking a *favor*, not asserting a right. Had the latter been his object, he should have used the word *protest*, and, taking higher ground, have warned the Peruvian government not to interfere with or molest the fishermen of the United States. If he were protesting, or remonstrating, he certainly employed the mildest language ever used for the purpose of maintaining a right.

But perhaps the most conclusive proof that Mr. Larned did not deny the jurisdiction of Peru, is to be found in the following sentence: "If the abuses which the decree sets forth have been practised, let them be repressed by such regulations as may be thought necessary and proper; but do not let them serve as a ground for depriving the innocent pursuer of this adventurous business of his accustomed places of resort."

Unless Mr. Larned admitted that the Peruvian government pos-

sessed an undoubted title to the islands and coast, he would scarcely have suggested that it should issue regulations to repress the abuse complained of, or for any other purpose. The note of Mr. Larned can, therefore, scarcely be considered a protest, or even a remonstrance against the right of the Peruvian government to exercise the attributes of sovereignty and dominion in the islands along its coasts.

On the 13th of March, 1834, the minister of foreign affairs replied to Mr. Larned's note above referred to as follows: "The coasts and the islands of Peru being the property of the republic, the government possesses the faculty of prohibiting to foreigners their use whenever it may think proper. The citizens of the United States, therefore, cannot complain of a measure the sole object of which is to reserve exclusively to Peruvians this branch of industry to provide for their wants and give a greater extent to their infant commerce. If the fishery of cetaceous and amphibious animals on our coasts and islands were conceded to foreigners, they might, after the lapse of some time, found rights upon such concessions which could not afterwards be suspended without grave disputes. History is replete with examples of the lamentable consequences of indiscretions even less than that involved in the concession asked for at present. Although our fishery is at present of little value, it must increase in proportion with all the other branches of industry, and it will increase more rapidly if our fishermen had no one to compete with them." (See copy of the note annexed.)

The Peruvian government, therefore, refused to accede to the request of Mr. Larned, that the citizens of the United States should be allowed to continue in the undisturbed enjoyment of fishing and catching seals on the coasts and islands of Peru, and there is nothing on record in this legation to show that he replied to the note of the minister.

On the 6th of November, 1833, the Peruvian government published new commercial regulations, by the twentieth article of which it is provided that "if any vessel coming from abroad shall anchor in other ports," (than the ports of entry mentioned in article nineteen,) "or in the islands of Lobos, Huanape, Huanra, Hormigas, and others, known by the name of guano islands, it shall be confiscated, together with the cargo, if belonging to the captain or to the passengers, if they knowingly contravened this article."

This decree was communicated to the chargé d'affaires of the United States by the minister of foreign affairs on the 18th of December, 1833, (see a copy of the note annexed;) and notwithstanding that in so doing he requested that Mr. Larned would make any observations upon it he might think proper, the latter does not appear to have made a written reply, and certainly did not *object* to the Lobos islands being embraced within its prohibitory provisions. Neither did he take notice of the exception made of those islands in the decree in any of the despatches subsequently addressed by him to the Department of State. The measure appears to have been acquiesced in both by the chargé d'affaires and the government of the United States, as there is nothing to the contrary on record in the archives of the legation.

It is also certain that since the publication of the prohibition, not nearly twenty years ago, no vessel belonging to citizens of the United

States has gone, openly, to any of the islands on the coast of Peru for the purpose of killing seals without having a license from the authorities. Some few years ago a citizen of the United States obtained a license from the custom-house at Payta to take a few seals at the Lobos islands; and that is the only instance I have any knowledge of in which such permission has been granted.

I have entered somewhat fully into this subject in order that the department might be informed of what took place between Mr. Larned and the Peruvian minister of foreign affairs on the occasion referred to. I am aware that my remarks are favorable to the title of Peru, and they are made because it is proper that the question should be conscientiously investigated; because I know that the government of the United States would not enforce a claim to anything which it was not fairly entitled to; and because it is my duty to prevent it from falling into error in a question which its sense of justice will, sooner or later, induce the government to decide in favor of Peru.

The minister of foreign affairs not having had time to collect the documentary and other evidence which he informs me he can produce to establish, conclusively, the right of Peru to the Lobos islands, and having informed me of his intention to address a note to me explaining, in detail, the grounds on which the Peruvian government claims that right, I shall be compelled to detain Mr. Miles until the 26th of this month, by which time, I do not doubt, I shall have obtained all the information requested in your despatch necessary to the final adjustment of this important question.

I think I can assure the President that the twenty vessels, mentioned in the list annexed to despatch No. 30 as having sailed for the Lobos islands to take in guano, will all be freighted by the Peruvian government to take guano to the United States or to England, at the rates stipulated in their present charter parties, provided the captains or supercargoes be willing to accept the terms. I have also little doubt that I can obtain the same conditions for the vessels said to have been chartered by Mr. Jewett and others, in the Pacific, for the same destination.

I beg leave to say, in conclusion, that Mr. Miles has been of great assistance to me in the matter under consideration.

He informs me that he received the duplicate order to Commodore McCauley, forwarded by the Navy Department to Payta, and left it at the Lobos islands.

I have the honor to be, sir, your most obedient servant,

J. RANDOLPH CLAY.

Hon. DANIEL WEBSTER,
Secretary of State.

LEGATION OF THE UNITED STATES OF AMERICA,
Lima, Peru, October 1, 1852.

To the masters, captains or owners of vessels belonging to citizens of the United States:

Whereas it appears, from information received at this legation from the United States of America, that a number of vessels belonging to citizens of the Union have been chartered to proceed to the islands of Lobos for the purpose of taking in cargoes of guano, under the idea that those islands are not under the dominion of any nation, and consequently that they are open to the commerce of the world ; and whereas the government of Peru claims the exclusive sovereignty and property in the said islands, and has sent armed vessels and troops to protect and defend them ; and whereas full instructions have been transmitted to this legation, from the government of the United States of America, upon the subject of the islands of Lobos ; and whereas any attempt on the part of the citizens of the United States, or by the vessels belonging to them, to take guano forcibly from those islands must, under the circumstances, be considered unwarrantable and illegal, inasmuch as our citizens are not justified in using aggressive measures in the prosecution of commerce, the Secretary of State having declared that no "countenance will be given to the authors of such enterprises, claiming to be citizens of the United States, who may undertake to defend themselves or their vessels by force in the prosecution of any commercial enterprises to those islands. Such acts would be acts of private war, and their authors would thereby justly forfeit the protection of their own government:"

Now, therefore, the undersigned chargé d'affaires of the United States of America to the republic of Peru, having in view the interests of both nations, and being desirous of preventing any collision, encounter, or dispute between the masters, captains, and crews of vessels belonging to citizens of the United States, arriving at the said islands of Lobos, and the Peruvian authorities and forces stationed there, hereby *warns* the said masters, captains, and crews to abstain from using any acts of violence or force to obtain guano from the said islands ; but, on the contrary, if duly notified by the authorities not to load guano there, that they proceed with their vessels to other destination, or to the port of Callao, *where they will be chartered in due form by the agents of the Peruvian government to carry guano for its account, or where they can await the further orders of the owners of their vessels, if it be the will of said masters or captains so to wait, in preference to accepting a charter.*

J. RANDOLPH CLAY.

LEGATION OF THE UNITED STATES,
Lima, September 18, 1852.

SIR: I wrote to you on the 18th ultimo, respecting the question of the Lobos islands, and mentioned that, in my opinion, the presence of a vessel of war of the United States was required at the port of Callao

Since that time the public mind in Lima was apparently quiet until the receipt of the two letters of the Secretary of State in relation to the Lobos, and the comments thereon, published in the American papers, stating that orders would be sent to you to protect the vessels belonging to citizens of the United States which might go to those islands to load with guano. This news has produced the most violent articles in the newspapers published in this capitol, against the government and citizens of the United States, and one in particular appeared in the "Comercio" of last night, calling on the people of Lima to attack the persons and property of the North Americans resident in Lima, and to kill them before any Peruvians should be killed at the islands; that is, to put us here to death to serve as a warning to our countrymen who may visit the Lobos. Such articles would not be tolerated in civilized countries, and are considered by the citizens of the United States likely to lead to the most deplorable results, by exciting the lower classes to put the threats in execution. I therefore deem it to be my imperative duty to address you again and request that a vessel of the squadron under your command may come to Callao, to be in readiness to protect the persons and property of the citizens of the United States resident here and elsewhere in Peru, in case of emergency.

I have the honor to be, sir, your obedient servant,

J. RANDOLPH CLAY.

Commodore C. S. McCauley,

Commanding-in-chief the U. S. Naval forces, Pacific ocean.

LEGATION OF THE UNITED STATES,

Lima, October 4, 1852.

The undersigned, chargé d'affaires of the United States, has the honor to transmit to his excellency Don José Manuel Tirado, minister of foreign affairs, a copy of the note addressed, on the 21st of August last, by the Secretary of State, to the chargé d'affaires of Peru, at Washington, in reply to those of the latter dated June 25, July 3, and August 9, 1852.

In the notes referred to, Mr. Osma claimed for his government the exclusive jurisdiction over, and right of property in, the islands of Lobos, denied the right of the citizens of the United States to take guano from them, and protested against any protection being given by the government to the vessels which might go there to load guano, or for any other purpose.

It is not the intention of the undersigned to add any arguments at present to the very lucid exposition made by the Secretary of State, of the right to trade with the islands of Lobos, acquired by the citizens of the United States from their uninterrupted resort to them during a long series of years, for the purpose of fishing and taking seals; and which shows that, by such customary resort of its citizens, the government of the Union can, in the present state of the case,

exhibit a claim to the possession of those islands at least equal to that of Peru, and better than that of any other nation.

In questions of this kind, arising between countries whose relations are so intimate, it is proper that a full explanation should be made by both parties of the grounds on which their respective claims are based, accompanied by the evidence necessary to elucidate them, so that a satisfactory solution may be attained through the medium of friendly negotiation. The government of the United States is animated with this spirit in the present instance; and as it is desirable that the question should be definitively adjusted between the two governments at the earliest possible date, consistent with a proper investigation of their respective claims, the undersigned respectfully proposes that his excellency the Minister of Foreign Affairs will have the goodness to communicate the facts, documents, and other testimony upon which the Peruvian government founds its asserted right of exclusive dominion over the Lobos islands.

The undersigned profits by this occasion to renew to his excellency the assurance of his most distinguished consideration.

J. RANDOLPH CLAY.

José Manuel Tirado to J. Randolph Clay.

[Translation.]

LIMA, October 9, 1852.

The undersigned, Minister of Foreign Relations, has the honor to inform the chargé d'affaires of the United States that he has received his esteemed note of the 4th instant, wherein is transmitted to him a communication made by his excellency the Secretary of State at Washington to the chargé d'affaires of Peru, on the 21st of August last, relative to the jurisdiction and property over the Lobos islands.

From the moment that the government of the United States, according to the concluding terms of the above-mentioned note from his excellency Mr. Webster, declared that no protection would be afforded to any vessels that attempted to convey guano from the islands above mentioned, either by physical force, or to carry on a commercial trade with them, and declaring at the same time that such proceedings would be considered as acts of piracy, and that the authors thereof would lose the protection of their government, he cannot do otherwise than acknowledge the regard which the government of the United States manifests for the rights of Peru, which is in truth an equitable action, such as the government of the undersigned cannot but properly appreciate.

The note above referred to is confined to making observations in regard to the right which certain acts, in the opinion of Mr. Webster, confer upon American citizens and vessels, enabling them to visit these islands, and fish in their vicinity, expressing the opinion at the same time this privilege further extended to the exportation of guano.

The undersigned had come to the determination, from the first, to delay making the proper response to the note of the 4th of October, for the purpose of entering into a thorough examination of all the arguments advanced in the note of the Secretary of State, in order to prove, as he will do, the exclusive and unquestionable sovereignty of Peru over the Lobos islands, and its special right to prohibit among them trade, fishery, and the exportation of guano by foreign vessels, without distinction, in contravention of the government regulations.

These rights are sustained by a mass of legal proofs and documents worthy of confidence, among which are some most particularly applicable to the commerce and shipping of the United States in these seas. But to gather this vast amount of evidence will require the collection of all these data, and therefore it will take several days to prepare said thorough reply.

Nevertheless, there are some documents of importance which the undersigned would wish to be brought to the knowledge of the government of the United States, and which will undoubtedly produce an alteration in the opinion which it has formed in regard to this matter, and under which the note of the Secretary of State, of the 2d of August, was written; and for this reason the undersigned, leaving until a future opportunity the giving of a more full and extended reply, will not confine himself to the mere acknowledgment of its receipt, but will also call attention to these documents here provisionally presented.

Wherefore, the undersigned will not immediately enter upon a detailed investigation of the distinction between the right to fish in the waters adjacent to the Lobos islands, and that of the exportation of guano, even in the supposed case that the right of fishery should have been accorded in favor of vessels of the United States, which has undoubtedly never been the case; nor, in like manner, will he on the present occasion speak of the rights conferred by a first discovery, nor of the virtual and actual possession held by Spain and Peru of territorial sovereignty, admitted by treaties, by history, and by universal consent; and lastly, by the appointment of military chiefs for the islands, and the present withdrawal of guano therefrom, facts which are sufficient to establish rights of possession in an indisputable manner, according to maritime law.

All these circumstances will, at the proper time, be urged as so many additional and logical arguments to prove the exclusive rights of Peru.

My purpose, which is restricted within the documents in question, is to make it apparent through them, that even that right to visit the islands for purposes of fishery could never have been such as to establish a right of possession; and that if there have happened instances where American vessels have made expeditions of this kind, these were not authorized or assented to as a right, in common with Peruvian citizens engaged in the same industrial pursuit. Isolated cases should not establish a customary or ordinary right, even though they may have been tolerated, as the *chargé d'affaires* will very readily admit. But the annexed copies prove that the Peruvian government has never permitted (as is asserted by the Secretary of State) "that citizens of the United States

should continue to engage in the fishery business, and that it has been tacitly allowed to them for a number of years."

These copies of documents are mostly extracted from the records and correspondence conducted during the year 1833 by the chargé d'affaires of the United States, Mr. Samuel Larned, at the time the decree was issued, prohibiting foreign vessels from engaging in the capture of cetaceous or amphibious animals on the coasts of the islands of Peru.

After this decree had been executed and promulgated, the aforesaid Mr. Larned signified, in his note of the 30th of September, 1833, that he could not look upon it as having any application other than to vessels of the United States, from the fact that they alone entered into those branches of the fishery business in said localities; a circumstance which itself alone proves that the intention of the government was not to acknowledge the further continuance of a business actually carried on by vessels belonging to the United States. His excellency Mr. Webster, in various passages in his note, alludes to the fact that the principle upon which Mr. Larned founded his reclamation in that case was not contested; but the document annexed contains a true copy of the note which was addressed to Mr. Larned, in reply, on the 13th of March, 1834, and which also expressed the determination of the Peruvian government that, in future, all articles prohibited by its decree of the 6th of September, 1833, be admitted. It is to be remarked that this reply of the minister of foreign relations, Señor Don José Maria Corbacho, was specially accorded and ordered in virtue of a decree issued by the president of the republic and by the minister of the treasury. The undersigned has had the honor to transmit the original said decree, and the pamphlets issued by this department in which the correspondence referred to is contained.

The undersigned will invite the attention of the chargé d'affaires to certain points embraced in the note of Mr. Larned.

In the first place, this note contained no reclamation of a right, inasmuch as the arguments upon which Mr. Larned based his application were that the prohibition of fishery was to be considered as an evidence of an unfriendly feeling towards the United States; and because citizens of the United States could not prejudice the interests of Peruvians in the fishery business, from the fact that the former were so little interested in that branch of industry. Moreover, Señor Larned represented that the cetacian fishery was not carried on along the shore of the main land, but in the waters surrounding the islands; a circumstance which explains the distinction between the fishery business and that of the exportation of guano, it being understood that, as they are different branches of industry, the undersigned cannot consent to admit the right of fishery.

Mr. Larned, at the close of his note above referred to, concludes by requesting a reconsideration of the decree of the 6th of September, 1833, and that this be followed by conceding to American citizens the privilege of fishing under proper restrictions, as is naturally to be inferred from the language of his concluding sentences. From all which it is supposed that he solicited an amicable concession, and never intended to assert that a right had been acquired; a concession which had already been officially and definitively refused.

ALFRED G. BENSON.

From that period Señor Larned kept silent about the matter ; and the right of Peru to prohibit fishery in the islands was sanctioned anew by the acknowledgment and implied assent of the legation of the United States at Lima.

Subsequently to the decree of the 6th of September, 1833, there was issued, on the 6th of November of the same year, a commercial regulation ; and in the twentieth article thereof, foreign vessels were prohibited, positively and expressly, from approaching to, or trading at, the Lobos islands.

This regulation was officially communicated to the diplomatic agents and consular functionaries of foreign powers, and the undersigned has the honor to transmit herewith a copy of the note which he addressed, under date of the 18th of December of said year, to the above mentioned Mr. Larned, of which regulation Mr. Larned, as far as the undersigned is aware, acknowledged the receipt, without making any protest or reclamation either in his own behalf or that of the government of the United States ; nor at that time, or subsequently, have they questioned the right of sovereignty and exclusive jurisdiction over the group of islands named " Lobos de Fuera " and " Lobos de Tierra ; " and it is not to be expected that legislation so positive, and so especially applicable to the commerce of the United States in these seas, should be subject to objection, now that they are properly recalled to mind.

Thus, consequently, the discretion of the government of the United States, and the exceeding judgment with which, through the medium of its new orders, it has resolved to further listen to the rights of Peru, and not to be affected by the doubtful information or want of knowledge of these circumstances which might have been occasioned by this affair, have afforded a reason why measures so positive as those above referred to, and to which the enclosed documents allude, establishing in an unquestionable manner the dominion of Peru over the islands, are to be considered as new reasons for preserving unharmed the friendly relations existing between this republic and that of the United States, in regard to whom the undersigned experiences satisfaction in stating, that he has always been foremost in manifesting a good feeling, which has never been disturbed.

The undersigned, in transmitting to Mr. Clay these documents, and the comments thereon annexed thereto, flatters himself that he has satisfied the laudable disposition manifested by the government of the United States that all objections to the territorial rights and jurisdiction of Peru should be explained and cleared away—as Mr. Clay remarks in his note—and has also complied with the no less friendly request of Mr. Clay, in furnishing him with the documents upon which that evidence is based, and which the undersigned transmits to him for the present, and without excluding himself from further reply hereafter.

The undersigned has the honor to renew to Mr. Clay the sentiments of especial esteem and distinguished consideration, with which he remains his obedient servant,

JOSÉ MAN'L TIRADO.

[Translation.]

Decree of September 6, 1833.

Citizen José Braulio del Campo-Redondo, vice president of the senate, exercising the executive power of the republic, &c.

In consideration—1st. That the fisheries on the coasts and islands of the republic ought to be carried on exclusively by Peruvian citizens;

2d. That, as at the present time, the fisheries are now being actually carried on by certain vessels from foreign parts, who are invading the property, and forcibly excluding the native-born citizens of the country who are engaged therein;—I decree:

Article 1st. The fishery of whales and amphibious animals is positively prohibited within the coasts and islands of Peru.

2d. Captains of vessels who contravene this regulation shall be considered to be smugglers.

3d. The port commanders shall give authority to citizens of Peru to carry on this branch of industry, information of the same being given to the superior authority of the department, to the commandant general of marine, and to the collectors of customs along the coast.

4th. Any national vessel whatever which is found in the vicinity of the coast and islands without the legal documents conferring upon it such permission, will be subject to detention, under suspicion, in any port of the republic; nor shall it have the right to claim damages or losses for said detention.

The chief clerk of the department of the treasury will take charge of the execution of this decree, and of its printing and publication. Executed in the supreme government house, at Lima, on the 6th of September, 1833.

JOSÉ BRAULIO DEL CAMPO-REDONDO.

By order of his excellency:

JOSÉ DE MENDIBURN.

[Translation.]

DOCUMENTS RELATING TO DECREE OF 6th SEPTEMBER, 1833.

Republic of Peru.—Two Reals.—Fifth seal, for the years 1832 and 1833.

To the Commandant General of Marine:

I, Nicolas Antonio Diaz, owner of four sloops engaged in the Lobos fishery, represent to you with the most profound respect: That permits or licences are being granted by the port captains along the coast to foreign vessels, enabling them to engage in the same occupation, thereby depriving myself and other citizens of the country from deriving any profit from a branch of industry which appertains exclusively to citizens of Peru. Whether this arises from licences

unlawfully given, or from criminal lenity, it is an abuse which it is your province alone, as chief of the revenue service, to correct; inasmuch as not only are citizens of the country treated in a hostile manner by foreigners, who prevent them, by physical force, from engaging in the fishery business, but the State loses its export duties thereby; and furthermore, the profits which are incurred from other branches, of which you cannot but be aware; for all which reasons I pray and petition you to be pleased to take the most energetic measures for the eradication of this thing, which is a matter of favor and justice which I expect you will award to me, &c.

NICOLAS ANTONIO DIAZ.

Republic of Peru.—A seal..

[No. 220.] OFFICE OF THE COMMANDANT GENERAL OF MARINE,
Callao, July 6, 1833.

To the Minister of State for War and Marine:

SEÑOR MINISTER: I enclose to you a statement made to me by a resident of this port, Nicolas Antonio Diaz, owner of several sloops engaged in the Lobos fishery, wherein he complains of the outrages committed by foreigners, obstructing natives of the country, to whom alone is exclusively granted the privilege of engaging in this industrial pursuit. Wherefore it appears to me that it would be proper for your department to issue more stringent orders to the prefects of the coast departments, for the purpose of entirely prohibiting the sub-prefects and governors from giving this kind of licences; and that the tribunal of this commandancy should give notice to the port captains not to permit the embarkation of any vessel for the fishery business, unless manned, commanded, and owned by Peruvian citizens, and giving, at the same time, official notice to the English and United States consuls of the outrages committed by the subjects of their respective countries, along the coast, against the unfortunate citizens of Peru, who, as they have to carry on this business in boats and sloops, are compelled, by physical force, to abandon them. It is not only this person who complains in this manner, but the captain of this port has made the same representation to me, and the same have been verbally laid before this commandancy, to wit: that the North American brig "Anna Wuan," before its departure for the United States, carried on an illegal fishery upon our coast, which abuse it would appear to be indispensably necessary to eradicate; for if it is tolerated, they would, in time, assert that they had a right to this branch of national industry, thereby depriving the State of the duties which are to be paid on the export of the skins and oil they may convey in their vessels.

For all which reasons I make this present report to you, and to his excellency, for such further action as may be determined upon.

God preserve you.

JOAQUIN DE SOROA.

JULY 6, 1833.

Let a note be addressed to the minister of the treasury, enclosing the above petition, for such action thereon as may be deemed necessary, and let him communicate the same to the commandant general of marine.

P. A. D. S. M.

CASTAÑEDA.

REPUBLIC OF PERU, DEPARTMENT OF WAR AND MARINE,
Government House at Lima, July 6, 1833.

To the Minister of State for the Department of the Treasury :

YOUR EXCELLENCY: I have the honor to forward to you, for such disposition as it may seem proper for you to make of it, the application of Nicolas Antonio Diaz, which has this day been addressed to me by the commandant general of marine, together with the original note with which it is accompanied.

God preserve you. S. M., P. A. D. S. M.

JOSE MECEDES CASTAÑEDO.

JULY 8, 1833.

Testification of solicitor.

MARTINEZ.

LIMA, July 19, 1833.

MOST EXCELLENT SIR: The solicitor says that your excellency has the power to request a report from the commandant general of marine, which, when executed, the testification will be made.

TUDELA.

LIMA, July 26, 1833.

Let the commandant general of marine make a report.

MARTINEZ.

CALLAO, July 30, 1833.

MOST EXCELLENT SIR: The report which is called for from me in this record, on the ground of the statement made by Nicolas Antonio Diaz, owner of four Lobos sloops, complaining of the depredations and outrages committed by foreign vessels upon those of smaller size belonging to our own country, and which are engaged in the fishery business; and also of their illegally carrying on the fishery business upon our coasts: all this I have urged in my note of the 6th of July ultimo, with the enclosures which I transmitted at the same, stating therein how much reason there appeared for eradicating these abuses; and I cannot but repeat the same statement in this report, referring you to said note.

Most excellent sir,

JOAQUIN DE SOROA.

LIMA, July 31, 1833.

Let this be returned to the solicitor general.

MARTINEZ.

LIMA, July 31, 1833.

MOST EXCELLENT SIR: The solicitor says that the complaint of the petitioner is a just one, and that the means which are proposed to be adopted by the commandant general of marine are such as are best adapted to restrain any usurpation of the Lobos fisheries to the detriment of national industry. Wherefore your excellency will accede to his suggestion, and cause the issue of the requisite orders.

TUDELA.

LIMA, August 5, 1833.

Let this be transmitted to the executive department, with the usual official note, to be acted upon.

MARTINEZ.

REPUBLIC OF PERU, DEPARTMENT OF THE TREASURY,
Government House at Lima, 4th Bureau, August 7, 1833.

MR. MINISTER: I have the honor to transmit to you herewith the record drawn up upon a statement made by D. Nicolas Antonio Diaz, in regard to the aggressions committed by foreign vessels in the Lobos fisheries, in order that the decision of the supreme authority may be awarded thereupon.

I remain your obedient servant,

ANDRES MARTINEZ.

MR. MINISTER OF STATE,*for the Department of Government and Foreign Relations.*

LIMA, August 19, 1833.

As no reclamation can be made in relation to the molestations complained of by D. Nicolas Antonio Dias, unless the vessels which committed, and the national flag under which they sail, is distinctly specified, let the record be returned for this purpose to the department of the treasury, and in order, at the same time, that said department decide upon the proper steps to be taken to prevent a repetition of such aggressions.

The rubric of his excellency,

P. E. D. S. M.

RIO.

R. P.—DEP'T OF GOV'NT AND FOREIGN RELATIONS,
Government House at Lima, August 22, 1833.

I have the honor to return to you the record drawn up upon the petition of D. Nicolas Antonio Diaz, who complains of aggressions committed by foreign vessels in the Lobos fisheries, in order that, in compliance with the decision of his excellency, you may be pleased to issue the necessary orders.

God preserve you.

P. E. D. S. M.

MANUEL DEL RIO.

*To the head of the 1st and 2d bureaus of the Department of the Treasury,
 executively empowered.*

LIMA, August 26, 1833.

Let a report be made by the commandant of marine, specifying the vessels which have committed the outrages complained of by Don Nicolas Antonio Diaz.

MENDIBURN.

CALLAO, August 28, 1833.

MOST EXCELLENT SIR: I have called upon Nicolas Antonio Diaz to inform me of the names of the vessels which have committed aggressions in the Lobos fisheries, as represented by him, in accordance with the supreme decree of the 19th instant, and he has replied to me that he does not know them. Under these circumstances, it seems to me that the suggestion made by my predecessor, in his note No. 220, of the 6th of July last, should be carried into effect; and I renew the same suggestion, requesting that I be furnished with the same information, as speedily as possible, for the purpose of preventing such irregularities, and in order to encourage this branch of industry in favor of the nations of our own country.

C. GARCIA DE POSTIGO.

LIMA, September 6, 1833.

MOST EXCELLENT SIR: Having come to a determination as to what shall be done in this matter in relation to the fisheries on the coast and islands of Peru, let it be recorded in the archives.

MENDIBURN.

LEGATION OF THE UNITED STATES,
Lima, September 30, 1833.

SIR: I have seen, with great regret, a decree of this government, published in the Conciliador, No. 73, prohibiting foreigners from catching both amphibious and cetaceous fish on the shores of this re-

public, and of its islands. As, amongst foreigners, the citizens of the United States are almost the only ones who here pursue this occupation, I cannot but consider this prohibition as particularly levelled at them; and in this light it will undoubtedly be viewed by the government of those States, and therefore be looked upon as a proof of an unfriendly disposition on the part of that of Peru towards their citizens; more particularly, as the pursuit by them of this branch of industry on the shores of Peru can be of no injury to her own citizens, inasmuch as they are not engaged in it, except, perhaps, to a very limited extent; and, if they were to a much greater, the long line of desert coast possessed by her, and its innumerable creeks, bays, and havens would afford ample room for the whole to follow this harmless avocation with undiminished advantage. It may be added to what has been said, that this decree is ambiguous, for fish of the cetaceous kinds are not caught on the "playas," but in the ocean; sometimes, perhaps, at a short distance only from them.

I have to request, therefore, in the name of my government, that the decree in question may be reconsidered, and so far modified as to permit to the citizens of the United States the pursuit of an occupation which they have been allowed quietly to follow for a number of years, to their advantage, and, it is believed, without injury to Peru. If the abuses which the decree sets forth have been practised, let them be repressed by such regulations as may be thought necessary and proper; but do not let them serve as a ground for depriving the innocent pursuer of this adventurous business of his accustomed places of resort, nor for the manifestation of an unfriendly spirit towards a sister republic, who cherishes for Peru the most amicable disposition.

I have the honor, &c.,

SAMUEL LARNED.

The MINISTER OF FOREIGN RELATIONS
of the Republic of Peru.

A faithful translation.

NIXON.

LIMA, *October 2, 1833.*

Let this be transmitted to the department of the treasury, by which the decree called for is to be issued.

P. E. D. S. M.

RIO.

PERUVIAN REPUBLIC, DEPARTMENT OF STATE AND FOREIGN RELATIONS,
Government House at Lima, October 2, 1833.

SIR: I have the honor to transmit to you herewith the note of the chargé d'affaires of the United States, wherein he complains of a decree published in "El Conciliador," No. 73, prohibiting foreigners from fishing for amphibious animals and whales along the shores and

islands of the republic; in order that you may be pleased to take the necessary action on the same.

I again repeat myself to be your obedient servant,

P. E. D. S. M.

MANUEL DEL RIO.

The Hon. MINISTER OF FOREIGN RELATIONS,
of the Republic of Peru.

—
LIMA, October 2, 1833.

Let this be examined by the Attorney General, first attaching thereto the record upon which the decree complained of was founded.

MENDIBURN

—
LIMA, November 25, 1833.

MOST EXCELLENT SIR: The Attorney General reports, that the aggressions of foreigners upon the fishery of amphibious and cetaceous animals along the shores and islands of the republic, and the complaints made by citizens engaged in this industrial pursuit, were the grounds upon which the supreme decree of the 6th of September last was based. The chargé d'affaires of the United States of North America complains against the provisions of said decree as being detrimental to the citizens of his own country. Inasmuch as the shores and islands of Peru are not public property, and belong to the nation alone, it cannot be said that the prohibition contained in said decree was directed against the citizens of the United States, or against those of any other nation. Its purpose was merely to preserve this branch of industry exclusively among our own citizens, so that they might supply their own wants, and receive an extension to the commerce of their country. It should be modified immediately, but not in the manner which Mr. Larned proposes. By specifying any particular shore or island, near which citizens of his country might fish, would amount to the concession of a right, and it would be impossible in future to deprive them of this privilege, without drawing upon us the entire armed force of that powerful republic. If individuals are tolerated in infringing on the rights of our citizens in this fishery, what would be the case if any direct authority for doing so was conceded to them? It is, therefore, in the power of your excellency to order the supreme decree in relation to this matter to be carried into effect, or to issue such orders as you may judge proper.

TUDELA.

—
LIMA, March 5, 1834.

In accordance with the opinion expressed by the Attorney General, let the provisions of the decree of the 6th of September, 1833, be observed; and let it be communicated to the department of foreign relations, that as the coast and islands of Peru are the property of the republic, it lies within the powers of the government to prohibit foreigners from using them in any respect which it may deem proper, provided they are in no degree subjected to damage; the object be-

ing to devote the fisheries exclusively to Peruvians, to enable them to supply their own necessities and extend their own commerce, and in order that said foreigners may never conceive that they have any right whatever to enter into such branch of business, in which they had merely been tolerated to the injury of native born citizens. Let the proper memorandum be made, and let it be deposited among the archives.

Rubric of H. E.—Private Secretary of H. E.

VILLA.

LIMA, *March 10, 1834.*

Let the proper memorandum be made in the office of comptroller general of accounts.

PAREDEZ.

PERUVIAN REPUBLIC, DEPARTMENT OF THE TREASURY,
Government House at Lima, March 5, 1834.

MR. MINISTER: The record called forth by a complaint made by the chargé d'affaires of the United States, in relation to the decree issued on the 6th of September of the year last preceding, concerning the fishery of whales and amphibious animals, having been brought to a close, his excellency the President directs me to tell you, that, as the coast and islands of Peru are the property of the republic, it lies within the powers of the government to prohibit foreigners from using them in any respect which it may deem proper. Citizens of the United States cannot, therefore, be damaged by a measure the sole object of which is to preserve to Peruvians the exclusive enjoyment of this branch of industry, in order to enable them to supply their own necessities, and give a greater extension to their own growing commerce. Should the fishery of whales and cetaceous animals along our coast and islands be accorded to foreigners, after the lapse of time rights would be attempted to be established upon such concession which could not be denied without serious misunderstandings. History is full of instances of the most unfortunate consequences resulting from indiscretions, perhaps less important than that which might result from the concession which is requested. Although the fishery business is at the present day limited in degree, it must increase, like all other branches of industry, and become still further augmented, if our fishermen have no others to interfere with them. With this I conclude my reply to the esteemed communication addressed by your department to that under my charge, dated on the 2d of October of the year last past.

Repeating to you the consideration with which I remain your obedient servant,

JOSE VILLA.

MR. MINISTER OF STATE,
For the Department of Foreign Relations.

LIMA, March 13, 1834.

Let a reply be returned to the chargé d'affaires of the United States, transmitting him therewith a copy of this note.

CORBACHO.

LIMA, March 13, 1834.

SIR: The note which the chargé d'affaires of the United States, under date of the 30th of September of the year last past, addressed to the department of foreign relations, having been transmitted to the treasury department for such decision as it might seem proper to make, the undersigned has subsequently, on the 5th instant, received the following reply thereto:

(Here follows a transcript of the preceding note.) The undersigned has the honor to communicate a copy of the same to the chargé d'affaires for his information, and in reply to his said note; renewing to him upon this occasion the sentiments of esteem and consideration with which he remains his obedient servant.

J. M. CORBACHO.

CHARGÉ D'AFFAIRES,
Of the United States of North America.

True copies:

T. BARRIGA.
ALVAREZ,
Chief Clerk.

The Minister of Foreign Affairs of Peru to Samuel Larned.

[Translation.]

DEPARTMENT OF FOREIGN AFFAIRS OF PERU,
December 18, 1833.

To the Chargé d'Affaires of the United States:

SIR: The undersigned, secretary of the department of foreign relations of Peru, has the honor to present to the chargé d'affaires of the United States of North America two copies of a new commercial regulation which this government has ordered to be established upon the express authority of the congress of the republic. The government of the undersigned is well aware that said regulation has imperfections, such as must be consequent upon all laws made by a people which has recently issued from a colonial stage; and especially upon such laws as relate to commerce, which cannot arrive at perfection until the light of experience dissipates the cloud of prejudices, which are always powerfully and irresistible when they have been of long standing.

However, this new measure, which the government of the undersigned has adopted for the benefit of commerce in general, must be viewed as the certain prelude to others still more beneficial, as soon

as all the comments upon the inconveniences and injuries which may be inflicted by the practical operation of certain articles of the regulation have been reduced to form, for the purpose of making application to the next legislature to modify, substitute others, or repeal any of its clauses. For this important purpose, it is a pleasure to the undersigned that he is enabled to inform the chargé d'affaires that he is authorized to request him to be pleased to transmit to him any information which may be brought to his knowledge, or which his intelligence should suggest, so that he may approve of it, and in this manner contribute a favor to commercial interests, which are the most powerful bonds in maintaining reciprocity and good will between nations.

The undersigned renews upon this occasion to the chargé d'affaires the assurances of the distinguished consideration with which he remains his obedient servant,

MANUEL DEL RIO.

A true copy.



F. BARRIGA.
ALVAREZ, *Chief Clerk.*

Mr. Clay to Mr. Webster.

[No. 112.]

LEGATION OF THE UNITED STATES,
Lima, October 12, 1852.

SIR: I have just been informed that the United States frigate "Raritan" is coming into Callao bay. I shall, consequently, communicate immediately with Commodore M'Cauley, and advise him to proceed to the Lobos islands at as early a date as convenient. He will, in all probability, arrive there in time to prevent any collision between the vessels which may go to the islands to take in guano and the Peruvian forces stationed there.

I have the honor to be, sir, your obedient servant,

J. RANDOLPH CLAY.

HON. DANIEL WEBSTER,
Secretary of State.

Mr. Clay to Mr. Webster.

[No. 113.]

LEGATION OF THE UNITED STATES,
Lima, October 19, 1852.

SIR: I have the honor to inform you that the frigate "Raritan" sailed on the 13th instant for the islands of Lobos. I had several interviews with Commodore M'Cauley during his stay at Callao, and he has resolved to prevent any collision from taking place between ves-

sels belonging to citizens of the United States which may arrive at the islands and the Peruvian forces stationed there.

I informed the Peruvian government of that fact by note, dated on yesterday, of which I enclose a copy, and also a copy of the answer of the minister of foreign affairs.

I am, sir, very respectfully, your obedient servant,

J. RANDOLPH CLAY.

Hon. DANIEL WEBSTER,
Secretary of State.

LEGATION OF THE UNITED STATES,
Lima, October 18, 1852.

I have the honor to inform your excellency that Commodore McCauley, the commander-in-chief of the naval forces of the United States in the Pacific ocean, sailed from Callao, in the frigate "Raritan," for the Lobos de Afuera islands, on Saturday last, the 16th instant in the afternoon.

Acting under instructions from the Navy Department at Washington, Commodore McCauley will prevent any attempt being made by vessels belonging to citizens of the United States to take away guano forcibly from those islands.

I profit by this occasion to renew to your excellency the assurance of the high consideration with which I am your excellency's most obedient servant,

J. RANDOLPH CLAY.

[Translation.]

LIMA, *October 19, 1852.*

I had the honor to receive your esteemed note of yesterday, by which you inform me that Commander McCauley has sailed from Callao for the Lobos islands in the frigate "Raritan," for the purpose of carrying out the instructions transmitted by the Secretary of the Navy of the United States, and to prevent any attempt on the part of North American vessels to take guano from those islands by force.

It is pleasing to me to acknowledge that this measure of the government of the United States will contribute, in a decided manner, to prevent the infraction of the laws of Peru, which prohibit the exportation of that manure without the permission of the government.

In this manner, in the friendly relations which exist between the two nations, there will not be the remotest cause of disagreement introduced, which is highly satisfactory to the government.

I renew to you, sir, the assurances, &c., &c.,

JOSÉ MANUEL TIRADO.

Señor J. R. CLAY, &c., &c., &c.

LEGATION OF THE UNITED STATES,
Lima, October 2, 1852.

SIR: A special messenger from the Department of State arrived at this legation yesterday, bringing, among other documents, a despatch to your address, which I have the honor to enclose. Of course I am not positively aware of its contents, but it no doubt refers to the question between the United States and Peru concerning the islands of Lobos, as the Secretary of States observes in a letter to the Peruvian chargé d'affaires at Washington, dated August 21, that "proper orders should be given to the naval forces of the United States in that quarter (Pacific) to prevent collision until further examination of the case."

As the government of the United States has furnished me with full instructions on the subject, and as the necessity that a vessel of war of the United States should be present in these waters is becoming every day more urgent, I beg leave to repeat the suggestion contained in my letters to you of the 18th of August and 18th ultimo, that you should come to Callao in the *Raritan*. I deem it important that before you proceed to the islands of Lobos, we should consult together upon the best course to be pursued under the circumstances, especially as I could then inform you of the state of the negotiations pending with this government.

The early arrival of a vessel of war of the United States in this quarter would certainly tend to prevent a collision which might otherwise end in bloodshed.

I am, sir, very respectfully, your most obedient servant,
 J. RANDOLPH CLAY.

Commodore C. S. McCAULEY, U. S. N.,
*Commanding in chief the naval forces of the
 United States, Pacific ocean.*

LEGATION OF THE UNITED STATES,
Lima, October 13, 1852.

SIR: I heard with pleasure through your secretary, Mr. McKean, of your safe arrival at Callao in the *Raritan*. As he informed me of your intention to proceed to sea to-morrow, on your return to the United States, it becomes my duty to advise you that orders were sent out to you from the Navy Department by Mr. Miles, bearer of despatches to this legation, which I forwarded to you on the 2d instant to Valparaiso, accompanied by the letter of which I have the honor to enclose a copy. A duplicate of the orders was sent to the consul at Payta, who forwarded it to the islands of Lobos, under cover to your address, by Mr. Miles, to be deposited with General Denstua until your arrival. I infer, from a despatch addressed to me by the Secretary of State, on the 30th of August last, that those orders instruct you to proceed to the Lobos de Afuera, as he says: "in the meantime it is a great object to prevent any collision;" and although I have

sent fifty copies of the printed notice (herewith enclosed) to be distributed amongst the masters and captains of our vessels, as they may arrive there, yet I consider it advisable that a vessel of war of the United States should go there and remain until all danger of collision between the merchant ships reported to have sailed for that destination and the Peruvian authorities shall cease.

The Secretary also observes, in the conclusion of a note addressed by him to the Peruvian chargé d'affaires at Washington, on the 21st of August last, that "under all these circumstances the President thinks it most advisable that full instructions on this subject" (the Lobos islands) "should be despatched to the chargé d'affaires of the United States at Lima, and that proper orders should be given to the naval forces of the United States in that quarter to prevent collision until further examination of the case."

It is, therefore, necessary that a vessel of war of the United States should remain for the present in these waters, not only to prevent collision, as before observed, but to protect the persons and property of citizens of the United States in Peru, should, unfortunately, any difficulty have occurred between the parties referred to at the islands.

As I hear with regret that your health does not permit your leaving the ship, I shall have the honor of visiting you, to-morrow morning, on board the *Raritan*, as it is highly important that an interview should take place between us.

I have the honor to be, sir, your most obedient servant,

J. RANDOLPH CLAY.

Commodore C. S. McCauley, U. S. N.,
*Commanding in chief the naval forces of the
 United States, Pacific ocean.*

Mr. Clay to Mr. Webster.

[No. 114.]

LEGATION OF THE UNITED STATES,
Lima, October 25, 1852.

SIR: With despatch No. 111, I had the honor to transmit to the Department of State a copy of a note addressed to me by the minister of foreign affairs, on the 9th of this month, communicating several documents relating to the decree of the Peruvian government of the 6th of September, 1833, and to the correspondence which took place between it and Mr. Larned on that occasion.

From the instructions contained in your despatch No. 30, in which you say that "our information respecting the acts of jurisdiction which Spain and Peru have exercised" (over the Lobos islands) "is by no means complete, and that it is desirable that I should supply the deficiency, and that it is particularly desirable to know whether the aborigines of Peru or the inhabitants of that country, while it was a dependency of Spain, were in the habit of taking guano from the islands off the Peruvian coast, and especially the Lobos islands," I infer that it is the wish of the government to obtain the most com-

plete and authentic information, so as to take a comprehensive view of the subject, and decide accordingly.

Acting under this supposition, I have been occupied in collecting facts and documents calculated to elucidate the subject of the Lobos islands, and I now proceed to lay before you the result. In doing so, it may not be out of place to enter into such inquiries as may aid in investigating the validity of the Peruvian title to those islands.

The right of the republic of Peru to the sovereignty and domain in the islands adjacent to its coast is based upon priority of discovery and priority of occupancy; and its title to them, as well as to the other territory within its limits, is three-fold, as derived from the Incas, from Spain, and by its own acts as an independent State.

And first, as to the claim of *prior discovery*. It would, even in the absence of historical proof, be evident, from the name of the islands, "Lobos," that they were first visited, in modern times, by Spaniards. The name identifies its origin. Amongst the many authorities, however, which show that the islands were discovered by Spain, the following may be cited, in addition to those mentioned in my despatch, No. 105, dated the 7th of August last.

The historian, Herrera, places the following title to the 8th chapter of the second book of his Third Decade: "Of the ports, heights, and other things of the coast, from Panama to Santa, where Francisco Pizarro and his companions arrived making discoveries."* And after naming a long list of ports and places, he says: "Another island, (de Lobos Marinos,) farther removed, is at ten leagues from the former, in about seven degrees;" thus showing that Pizarro's expedition discovered them.

The buccaneers constantly touched at the Lobos islands, and, in the published accounts of their voyages, they are invariably referred to as under the dominion of Spain.

In 1681, Captain Cowley, after committing depredations along the coast, "resolved that they should proceed to Cape Blanco, in order to intercept the plate fleet from Panama; on their way they took a ship, with which they sailed to the Lobos."

Dampier was at the Lobos in 1685. On the 17th of August, 1709, Captain Woodes Rogers "came to an anchor between the two islands of Lobos de la Mar," which are thus described by him: "The islands of Lobos de la Mar are so called to distinguish them from Lobos de la Tarra. They are about six miles long, and forty-eight from the continent, and afford neither wood, water, nor vegetables. The soil is sterile—white clay mixed with sand and rocks, and several veins of slate." "The ship's crew found abundance of bulrushes and empty jars which had been left by the *Spanish* fishermen; for all over this coast jars are used instead of casks as the receptacles of oil, wine, and other fluids."

The above extracts are taken from Mavor's *Voyages*, volume third, edition of 1796, and they prove that other nations visited the islands long before the existence of the United States as an independent na-

tion, and also that the Spanish inhabitants of the coast were constantly in the habit of resorting to them.

Acosta and Garcilasso de la Vega state that, under the government of the Incas, their subjects went continually to the islands of Lobos de Afuera. Such being the case, and as the republic of Peru has inherited through Spain all the right and title possessed by the Incas over those islands, it scarcely can be required that the present government should show that they were discovered by Spain, or by the white race. The fact that the subjects of the Incas went there in balsas, &c., is sufficient to sustain the Peruvian government in asserting its claim of prior discovery over all other nations. That the subjects of the Incas sailed continually up and down the coast, and even undertook voyages of some length, appears from Herrera, who says that, in 1526, Pizarro captured "a balsa so large that it looked like a ship, (una balsa tan grande que parecia navio,) with fifteen Indians on board, and shortly afterwards saw four others going from Tumbes to carry on war with Puná." (3d Decade, book 1, ch. 4, p. 283.) On one occasion fifty balsas visited Pizarro's ship as he lay at Tumbes. It was in these balsas that the Indians went to the Lobos to fish and take away guano.

Secondly, as to the right of Peru to claim exclusive jurisdiction over the Lobos islands on the ground of occupancy.

Before proceeding to investigate whether the Peruvian government has by its acts taken formal possession of the Lobos islands, it may be observed that those islands were always considered as belonging to Peru. All the maps, ancient and modern beginning with one in Herrera's history, first published about the year 1601, place the islands of Lobos de Afuera and de Tierra as within the Peruvian territory; and it may safely be asserted that few entertained any doubts until certain subjects of Great Britain attempted to invalidate the title of Peru. When it was first announced in the British newspapers that islands containing large deposits of guano had been discovered in the Pacific ocean, probably every one interested in finding them looked over its wide expanse and sought the islands among the unnumbered groups of Polynesia; and I do not risk much in saying that, with the exception of those in the secret, there was not a citizen of the United States or a subject of Great Britain who imagined that the Lobos were the islands referred to, or who was not surprised to hear that such was really the case. Supposing, therefore, that the right of Peru rested only on tradition, and the general public conviction that they belonged to the republic, it would seem to be sufficient to vest in it a good title to the exclusive jurisdiction over them.

Should this mode of deriving a title be deemed untenable, the Peruvian government can, in the second place, claim a constructive occupancy of the Lobos islands, from the fact that the fishermen of Lambayeque and other places on the coast have from time immemorial resorted to them to take fish, and for other purposes; part of them remaining there for days, and often weeks, in pursuit of their occupation; whilst others were employed in conveying provisions and other necessaries from the main land, thus keeping up, as it were, a continual connexion equivalent to an occupation of the islands. And

here it is proper to remark, that the inhabitants of Peru frequenting those islands are not *Indians*, as is generally supposed, but persons of the white and mixed races of the country, who are citizens of the republic, and entitled to all the privileges secured by the constitution. Their acts must, therefore, be considered in a different light from those of the members of a savage tribe, which bind no one.

It is conceded that where an island is discovered by a trading vessel, the nation to which she belongs is entitled to claim all the advantages conferred by priority of discovery; and it would seem to be but just that, where such island is adjacent to the coast of the nation, the subsequent habitual resort of its citizens to it should be sufficient to constitute an occupancy, and to vest the property of the same in the nation.

The Lobos islands having always been used by the inhabitants of Peru as a fishing station and for other purposes, the Peruvian government has made, by the acts of its citizens, as formal an occupancy of them as such islands are capable of.

But the Peruvian government has exercised acts of sovereignty and ownership over the Lobos and other islands within its domain.

By the decree of the 6th of September, 1833, it prohibited foreigners from fishing and catching seals in those islands; and by the 20th article of the commercial regulations, published on the 6th of November, 1833, the government interdicted foreign vessels from anchoring in the Lobos islands, as stated in my despatch No. 111, above referred to.

Then followed the contracts made with Quiros, Allier & Co., and other foreign houses, for the sale of guano, and the decrees issued by the Peruvian government on the 21st of March and 10th of May, 1842, prohibiting foreign and national vessels from anchoring at the islands without licenses, regulating the commerce in the article, and prescribing the rules by which national vessels were to be governed in taking guano from those deposits for the agriculture of the country.

Those decrees and all the subsequent ones relating to guano were published in the official paper, "*El Peruano*," printed by the authority and under the direction of the government. And, as each number of the official paper was regularly sent, as it appeared, in duplicate by the government to every legation accredited to it, there can be but little doubt that the decrees in question were communicated to the *chargé d'affaires* of the United States at the time of their publication. This practice has existed for the last fifteen or twenty years, and the object of it is to give official notice to the foreign diplomatic agents of the public acts of the government.

Before proceeding further, it is proper to show that the aborigines of Peru had discovered all the islands along the coast containing guano, and that they and their Spanish conquerors after them were in the habit of taking it from off them, including the Lobos islands. The works containing the information are of unimpeached authority.

In the first place, Padre Acosta, in his "*Natural and Moral History of the Indies*," published at Seville in the year 1590, says: "In some of the islands and rocks along the coast of Peru there are seen from afar a number of hills perfectly white, which a spectator would pro-

nounce to be snow, or that the whole was white earth ; but they are mountains of the excrement of sea birds who go there continually to void their excrement. And there is so much of it that it rises varas and lances in height, which seems fabulous. Barques go to these islands for the sole purpose of loading with this excrement, for there is no other product, great or small, on them, and it is so effective and so convenient that land manured with it yields grain and fruit in great abundance. They call the said excrement *guano*, from which is derived the name of the valley they call Lunaguana, among the valleys of Peru, where they make use of this excrement, and it is the most fertile of any in these parts. There quinces, pomegranates, and other fruit greatly excel in size and flavor, and they say it is because the water with which those trees are irrigated passes through land manured with this excrement and produces such beautiful fruit.”—(Book 4, ch. 37, p. 286.) He states that the dominions of the Incas were divided into *four* provinces: “Collesuyo, to the south ; Chinchasuyo, to the north ; Condesuyo, to the west ; and Andesuyo, to the east ; the city of Cuzco being the capital and centre of the empire.”—(Book 6, ch. 13, p. 418.)

Garcilasso de la Vega informs us that “on the seacoast they do not use any other dung than that of marine birds, of which there are large and small on all the coast of Peru, and they go in such immense flocks that it would be incredible to those who do not see them. They breed on the uninhabited islands along that coast, and the excrement they leave there is also incredible. The mountains of excrement resemble, from afar, the peaks of some ‘Sierra Nevada.’ Every island was, by order of the Inca, assigned to one or other province. And if the island was large they gave it to two or three provinces.” * * * “The inhabitants of one town were prohibited from taking the manure from the space allotted to others.”—(Commentarios Reales, book 5, chap. 3, p. 134.)

Finally, the historian, Herrera, in describing the west coast of South America, says : “There are on the coast of this Audience,” (“de los Reies” or Lima,) “from the point of Aguja, the following islands, &c. : two islands called Lobos Marinos, situated in seven degrees, one four leagues from the coast, and the other farther out into the sea.” “The Indians carry away a great quantity of excrement of birds from the islands of Lobos Marinos for their plantations,” (heredades,) “with which they fertilize their barren lands.”—(Herrera. Descripcion de las Indias Occidentales, chap. xx., p. 46, edit. 1725.)

The preceding extracts prove conclusively that the aboriginal inhabitants of Peru were in the habit of taking guano from the islands off the Peruvian coast, including the Lobos. Their system of agriculture, and the laws for the preservation of the birds and the distribution of guano, were adopted by the Spaniards ; and although the citizens of the republic were accustomed, until the article became a commercial commodity, to take guano indiscriminately from the islands, yet the aboriginal manner of manuring lands, &c., was never abandoned, and is in practice at the present day. The habit of taking guano from the insular deposits and using it for agricultura

purposes, by the inhabitants of the coast of Peru, can therefore be traced back, through every form of government, for ages; and some of the haciendas or estates now in cultivation were the property and residences of subjects of the mystical dynasty of the Incas.

It is not necessary for me to enter into a detailed examination of the decrees of the Peruvian government, or the contracts made by it, on the subject of guano, as a full statement of them will be found in my despatches Nos. 5, 51, 57, 60, and 61, dated January 11, 1848, August 12, October 20, December 22, 1850, February 8 and November 13, 1851; and they are communicated with Mr. Tirado's note, dated the 23d instant, which I have just received, and a copy of which and of the documents referred to is transmitted herewith. Among those documents is an extract from the topographical report made by E. C. Carter, a citizen of the United States, who was employed in 1847, by the Peruvian government, to make a special survey of the guano islands along the northern coast of Peru, in which he described the Lobos islands minutely, and made an estimate of the quantity of guano upon them. This was as formal possession as could be taken without actually placing habitations and inhabitants upon them.

Besides the decrees and contracts referred to in the above-mentioned despatches, the Peruvian government published new commercial regulations on the 4th of March, 1852, which contain the following provisions:

ARTICLE 14.—It is not allowed to anchor in any of the anchorage grounds belonging to the republic, without a written license from the government.

ARTICLE 15.—Vessels which load with guano for abroad, can only do so in the islands of Chincha. Those taking it for the agriculture of the country must load at Pabellon Pica, or the said islands.

ARTICLE 114.—Guano can only be exported in vessels contracted for by the government.—(See despatch No. 98, dated April 18, 1852.)

The Peruvian government, in the next place, issued a decree on the 7th May last, specially naming the guano islands, and annexing them to provinces or districts of the republic, and ordering the construction of buildings on the principal ones. By this decree, the Lobos de Tierra are annexed to the district of Lambayeque, and the Lobos de Afuera to the district of Eten, in the province of Chiclayo. Finally, governors were appointed by the president of Peru, to reside in the Lobos islands, by commissions dated on the 21st of June last. They proceeded immediately to their posts, accompanied by a certain number of troops, and have since been joined by reinforcements.

The formal occupation of the islands of Lobos, by placing inhabitants to reside upon them, occurred in the month of June of the present year, that is to say, before the news reached Lima that the United States laid any claim to them. It will be recollected that the first movement in the matter was made by Captain Jewett, in the letter addressed by him to the Secretary of State on the 2d of June last, information of which was not received in Lima until about the 16th of July, and after the Peruvian troops had been sent to the islands. It is evident, therefore, that the occupation of the Lobos islands by Peru was not made under any apprehension of an attack upon its rights by

the United States. It was unquestionably done in consequence of the proceedings which took place in England.—(See despatch No. 103, dated June 24, 1852.) Peru, therefore, cannot be accused of having taken a hurried possession of the islands, to anticipate any similar intention on the side of the United States. She did so to prevent any encroachment by Great Britain.

Such are the grounds on which the Peruvian government rests its claim to exclusive property in the Lobos islands, supported by facts, documents, and acts of ownership. In opposition to this array of proof, what have the United States to offer? The visit of Captain Morrell to those islands, and the irregular resort of whaling and sealing vessels to them for a number of years, without interruption from Spain or Peru. It was precisely during this time that the former and latter governments were distracted by foreign wars or internal troubles, when neither could give attention to the commercial and other interests of the nation. But, independently of this consideration, the voyages made by citizens of the United States to the Lobos islands to take fish and seals do not prove that Peru had abandoned her title to them, nor confer upon the United States the right to trade there, if the principle asserted by the United States, in the negotiation with Great Britain on the subject of the northwest boundary, or, as it is usually termed, the *Oregon question*, be carried out. The American plenipotentiary used the following language on that occasion: "The undersigned asserts confidently, that neither by public nor private law will the mere silence of one party whilst another is encroaching upon his rights, even if he had knowledge of the encroachment, deprive him of these rights. If this principle be correct as applied to individuals, it holds with much greater force in regard to nations. The feeble may not be in a condition to complain against the powerful, and thus the encroachment of the strong would convert itself into a perfect title against the weak."

(Letter of Mr. Buchanan to Mr. Packenham, dated August 30, 1845. Executive documents, 1st session 29th Congress, document 2, page 180.)

Applying that principle to the present case, it is clear that the Peruvian claim of exclusive jurisdiction over the Lobos islands is not weakened by the fact that the vessels of the United States had frequented them during a long period of years without interruption.

After a careful investigation of the subject, and an examination of the facts and documents connected therewith, my original conviction, that the title of Peru to the exclusive possession of the islands of Lobos is perfect and unquestionable, has been fully confirmed.

In my answer, therefore, to the note of the minister of foreign affairs, above referred to, I have acknowledged the right of the Peruvian nation to the sovereignty and jurisdiction over them, believing such acknowledgment to be in accordance with the principles of justice which have ever distinguished the acts of our nation.

A copy of that note is enclosed, and I trust that the course I have taken may meet with your approbation and that of the President.

I have the honor to be, sir, your most obedient servant,

J. RANDOLPH CLAY.

Hon. DANIEL WEBSTER, *Secretary of State*.

[Translation.]

Extract from the Natural and Moral History of the Indies, by Father José Acosta, of the Order of Jesus. Seville, 1590. Book IV., chap. 37, page 286.

Besides these birds, so adorned and of such rich plumage, there are others in the Indies altogether different, which, in addition to their being ugly in themselves, serve for no other use than voiding excrements, and with all this they are perhaps not the less valuable. I have considered this fact, and admired the providence of the Creator, who ordains in so many ways that the other creatures shall assist man.

In some of the islands and rocks along the coast of Peru there are seen from afar a number of hills perfectly white, which a spectator would pronounce to be snow, or that the whole was white earth; and they are mountains of the excrements of sea birds, who go there continually to void their excrements; and there is so much of it that it rises varas and lances in height, which seems fabulous. Barques go to these islands for the sole purpose of loading with this excrement, for there is no other product, great or small, on them; and it is so effective and so convenient, that land manured with it yields grain and fruit in great abundance. They call the said excrement *guano*, from which is derived the name of the valley they call Lunaguano, among the valleys of Peru, where they make use of this excrement, and it is the most fertile of any in those parts; there, quinces, pomegranates, and other fruit, greatly excel in size and flavor, and they say it is because the water with which those trees are irrigated passes through land manured with the excrements, and produces such beautiful fruit. So that the birds yield not only flesh to eat, song to delight, and plumage for ornament and show, but their very excrement is also for the benefit of the land, and all ordained by the Almighty Maker for the use of man, so that man should prove himself grateful and loyal to Him who is bountiful to him in all things.

[Translation.]

DEPARTMENT OF FOREIGN RELATIONS,
Lima, October 23, 1852.

By note of the 9th instant, the undersigned had the honor to address the chargé d'affaires of the United States, for the purpose of enclosing to him two important and decidedly significant documents, proving the sovereignty and exclusive dominion which the Peruvian government has held and exercised over the group of islands denominated "Lobos de Fuera" and "Lobos de Tierra," and this, too, especially in relation to vessels and citizens belonging to the United States.

On that occasion the undersigned proposed to make a more extended

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communication upon this same subject of the sovereignty and dominion of the islands; and he now proceeds to fulfil his promise, having in view the note which his excellency the Secretary of State of the United States addressed to the chargé d' affaires of Peru, at Washington, under date of the 21st of August last.

In truth, the government of Peru would never have apprehended that its possession and dominion of the Lobos islands could be called in question, were it not for the value and universal use which guano has attained; for which reason private individuals, engaged in the exportation of this new article of commerce, have taken pains to awake the attention of governments by statements either imperfect or erroneous with regard to the sovereignty over these deposits. But it is clear that when the rights and jurisdiction of Peru have been once acquired, the subsequent adoption of an article like guano to foreign commerce, and its new commercial value over the world, cannot alter the nature of those rights nor invalidate the jurisdiction of the laws and regulations of Peru.

Rights of possession, especially within maritime jurisdiction, are based upon the proximity of islands to the coast, upon the right of prior occupation, or upon universal assent; upon tacit or expressed agreements concluded with other powers, or upon the exercise of a jurisdiction assented to for a long period of time; and under these circumstances the sovereignty of Spain, and the subsequent sovereignty possessed by the countries in America which had been colonies of that monarchy, over the adjacent islands comprised within the same degrees of latitude, and always looked upon as included among the possessions in the South sea, has been acknowledged for centuries, and has been acted upon as an established fact, as appears to a greater or less degree in all the transactions and conventions which have determined the actual laws in force which have regulated commerce and navigation in the Pacific ocean.

In the first place, if the occupation of an island recently discovered confers a title to its possession worthy of respect, such discovery and occupation, in cases where possessions have been acquired for a long period of time, usually becomes a historical fact, as may be proved by the reports of travellers, the testimony of historians, and the statements of geographers and mariners.

Thus, from the moment that any dispute arose in regard to territorial jurisdiction over the Lobos islands, Peru was not necessitated to advance any argument against every assault, other than the fact of possession universally assented to; for possession and the assent of nations confer the strongest rights under the principles of international law.

Ever since the discovery of America all writers, travellers, and geographers who have happened to turn their attention to these islands, which, from the very fact that they contained an article which did not then possess such value in its application to foreign industry, and from the fact that they were not always inhabited, could only have been alluded to in a few books and geographical maps, mention that they were originally the property of Spain, discovered during the first expeditions of the Spanish discoverers and conquerors; and finally

assign them to those provinces which, having formerly been Spanish, now constitute respectively an independent nation, possessing all the territorial rights of the mother country.

Looking at it in this point of view, there would seem to be little foundation for the deductions which might be attempted to be drawn from the accidental allusion made in England by Lord Stanley, under Secretary of State, in his reply to the letter of Mr. Buller; and which, with a different object, is quoted by his excellency the Secretary of State, to the effect that "*no mention has been made in the political constitution of Peru, in reference to the Lobos islands, since it became independent.*"

The circumstance that no mention is made of any portion of its territory in the constitution of a State, which is merely a political law, will not be viewed by the chargé d'affaires as a sufficient reason for disavowing its territorial rights, founded on a title derived from the law of nations. If this assertion be correct, Peru cannot consider herself as possessing less right of property, in that respect, to the Lobos islands, than what she has over all the other places which constitute her territory, whether such rights have or have not been circumstantially and distinctly determined in her political constitutions. This remark, applied to the present case, receives still greater force if it be borne in mind that in the first political constitution of Peru, which is that of the 12th of November, 1823, no definite line is drawn of the limits of the territory of Peru, nor are any portions of it designated; the principle regulating in this respect being the possession of Spain, whose territorial rights were transmitted to the independent government, according to every principle of political and international law.

The undersigned stated that none of those who have made mention of the Lobos islands, either historically or scientifically, have failed to look upon them as the property of Peru; and, in fact, as far back as Garcilazo de la Vega, in his "*Comentarios Reales*," and Antonio de Herrera, chronicler to his Catholic Majesty, the most ancient and universally acknowledged to be accurate historians of Peru, there may be found proof of the discovery, occupation and use of the Lobos islands; and, although a diplomatic note may not be the proper document wherein to accumulate quotations from historical sources, it may be satisfactory to find that, in a matter where it would be sufficient merely to allege a possession which is not denied, there are documents so worthy of respect, which explicitly establish the rights of Peru.

Garcilazo tells us in book 3d, chapter 16th, that the seafaring expeditions of the Indians, the aboriginal inhabitants of Peru, was extended several leagues from the coast for purposes of fishery and maritime industrial pursuits. The same writer details at length the laws of the Incas intended to regulate the exportation of guano from the islands, and the following passages in chapter 3d, book 5th, are well worthy of note: "Along the seacoast, from still further down than Arequipa, as far as Tarapaca, a shore line of more than two hundred leagues, they use no other manure than what is obtained from the sea-fowl, which exist all along the Peruvian coast, both large and small varieties, and frequent it in flocks so numberless that they would be incredible unless seen. They breed in certain uninhabited islands which lie along that coast, (he speaks of Peru generally,) and

Captain Amasa Delano during the year 1806, and published in 1817 at Boston.

The newspapers of the United States have copied, within the last few months, in connexion with this affair of the Lobos islands, pages 524, 525, 526, and 527, of said work, wherein the Lobos islands are described, and that which they principally contain, which is guano.

It is worthy of remark that Captain Delano likewise alludes to what had been written in regard to the use made of the guano of the Peruvian islands, as far back as 1612, by a traveller named Samuel Burches, and published in London in 1625 under the title of the "Pilgrims."

Pursuing the course of this investigation up to periods less remote, the undersigned can refer to the "Diccionario Geografico" of Alcedo, also alluded to in the note of his excellency the Secretary of State, in which not only the discovery, but likewise the assignment of the islands of "Lobos Afuera" and "Lobos Adentro" to one of the Peruvian provinces, under the Spanish rule, is alluded to in the same manner as in the work of Herrera. This article from Alcedo's Dictionary is reprinted in the documents published by the British Parliament for the very purpose of investigating the dominion of Peru over said islands, and of which documents the Secretary of State has information.

The high authority of the enlightened historian of our own times, Prescott, a citizen of the United States, whose statements relative to the legislation of the Incas in regard to the distribution of guano, and the consequent sovereignty of those monarchs over the islands which contained it, are derived from the historians already quoted, and particularly from Garcilazo de la Vega, lends it support in proof of this historical fact. The allusion made by Prescott strengthens the authority of the Spanish writers for the object maintained in this note.

So much so is this the belief which has been entertained in the United States in regard to the proprietorship of the islands, that the celebrated North American geographer, Mitchell, not only delineates them in his map as appertaining to Peru, but, in the explanatory index of said map, it may be read, opposite to the article "Lobos Islands," that they are a dependency of, and belong to, Peru.

Older geographical maps and scientific voyages are no less explicit upon this point. Not to mention the maps and geographical descriptions in which the Lobos islands are ordinarily alluded to as appertaining to the dominions of Spain, the undersigned, in order not to make his series of quotations too voluminous, refers to the authority of Don Jorge Juan and Don Antonia de Ulloa, an authority universally recognized by all who treat of matters relating to the Pacific and settlements made thereupon in the narrative of the voyage which they made, by order of the Spanish government, to measure astronomical degrees and determine the figure of the earth.

In like manner he cannot neglect to allude to the voyages of his Britannic Majesty's Captain Colnett, who made his explorations by authority of the admiralty in 1793, who made a reconnoissance of the Lobos islands, and who, in speaking of them and others adjacent to this coast, expresses the precautions he took, from respect to treaties, not to land upon them, in consequence of his well grounded belief

that they were only visited on certain occasions, for unlawful purposes, by smugglers "and other interlopers."

Prior to him, there is a very curious and authentic "log-book" of the Spanish frigate "Monserat," in which the position and characteristics of the Lobos islands—to which log-book the undersigned has had the honor to call the attention of the chargé d'affaires, with whom he has also consulted and pointed out the existence of the passages already quoted from the voyages of Jorge Juan and Captain Colnett.

At the present day we have the Universal Geographical Dictionary, published in Barcelona in the year 1832, wherein the Lobos islands are spoken of as appertaining to Peru, being included within the intendency of Trujillo; and, in the year 1839, the publication was concluded of the voyage made, under the orders of the British admiralty, by the ships "Beagle" and "Adventure," of the British navy, for the purpose of correcting errors in charts, in which publication the Lobos islands are alluded to in the same point of view.

It is to be concluded, from all this, that there is no document or scientific work, without exception, in which the proprietorship and exclusive jurisdiction of Peru over said islands is not to be deduced as a positive fact, according to all evidence that has been collected up to the present day.

The fact that they are not islands permanently inhabited, that is to say, that they contain no regularly constructed buildings, has no bearing upon the question, because they possess no water, and especially because there have always existed laws and regulations prohibiting the frightening away the birds therefrom by the presence of man. But besides, the fact that they were uninhabited has not had the power to prevent the establishment of a national jurisdiction, as happens in maritime places, and other islands, where the right of fishery and the exercise of exclusive sovereignty are admitted, notwithstanding they do not contain actual residents thereon, it is very satisfactorily proved, by the evidence of all who have visited those islands, that the natives of Paita and Lambayeque have been in the habit of frequenting them at certain seasons for the purpose of carrying on the fishery business and collecting the eggs of sea-birds, &c.

The intercourse between the inhabitants of that coast and the islands is frequent, and it is a common practice to visit and reside in them at certain seasons; it being necessary to remark that said periodical and occasional, but frequent, visits to the islands, are not made, as might be occasionally given to be understood, by Indians not yet civilized. The inhabitants of the coast of Peru are of different races, but there are Peruvian citizens in those parts residents of large villages and even of cities, and they are found among the most cultivated part of the population, and engaged in foreign commerce. In regard to the Indians themselves who reside in those parts, it is proper to state that they are considered as an integral portion of Peruvian society, and enjoy the rights of citizenship under the 8th article of our political constitution, even although they may not know how to read or write.

This observation has been made necessary in order to obviate a false

impression which certain information, furnished by interested parties, may have produced at a distance in regard to the character of the Peruvians who frequent the Lobos islands.

The undersigned now proceeds to take into consideration that jurisdiction and sovereignty which has not yet been warranted, according to the rules of possession under common law and universal assent.

In support of this historical proof, and the legal arguments to be derived from the laws of nature, we have the authority of treaties equally explicit as regards positive international law, before which, also, any objections which might be raised in relation to discovery, occupation, or otherwise, must undoubtedly be considered to have disappeared, even in case the right of Peru to exclude all foreign sovereignty were not so manifest.

The undersigned, in order to sustain this latter assertion, will appeal to the most ancient records of international law, as also to the 8th article of the treaty of Utrecht, concluded in 1713, and the prior treaty of Madrid, of the 27th of March of the same year; the 11th, 12th, 13th, and 14th articles of which are explicit as regards the recognition of the exclusive sovereignty of Spain over all these possessions in the South seas.

The undersigned has, of course, no intention to claim upon this occasion the strict rights which at that time may have conceded and recognized so extensive a maritime jurisdiction; but it cannot be denied that England, with which those treaties were concluded by Spain, was undoubtedly bound to recognize the territorial rights then established, in so far as regarded these possessions on the main land and the islands of the South sea; and that this was done without even adhering to the general principles of international law in regard to the titles which are derived from the material occupation of unknown islands, the Lobos islands not being then comprised in that category.

It is not therefore under this aspect alone, in the opinion of the undersigned, that a question is governed by the general principles of the law of nations. It is also subject, and very particularly so, to the conventional principles which are entirely obligatory between England and Spain.

Inasmuch as at the time when the treaties of Madrid and Utrecht were concluded, in which the exclusive sovereignty of these territories and islands is recognized, the United States formed part of the British monarchy in the same manner as Peru constituted part of the Spanish monarchy, the undersigned thinks that the obligations contracted in perpetuity of a real and permanent character between the Spanish and British nations are equally sacred and to be respected by those nations, who, having thrown off the aforesaid sovereignty, have since formed themselves into independent nations, in so far at least as regards mutual territorial rights.

The stipulations of Spain to preserve those territorial rights intact are so many additional acts of sovereignty exercised by her, and this is the proper occasion to invite attention to that part of his excellency Mr. Webster's note where he requests information as to the acts of jurisdiction exercised by his Catholic Majesty at that time.

Undoubtedly it will be difficult to find prohibitions of a local char-

acter, or authority for such jurisdiction in especial cases of violation of the rights of the State in those islands.

The colonial system which was in force in those regions, as a general thing, excluded therefrom the trade of other nations unless authorized by special concessions. The treaties which I have just alluded to, and nearly all the transactions subsequently entered into by Spain with maritime powers, prohibited foreign trade in these seas; and the undersigned will cite, among others, the 4th and 6th articles of the treaty of San Lorenzo of October 28, 1790, concluded between Spain and England, in which fishing is prohibited to British subjects by the first of said articles, within a distance of less than ten leagues from places occupied by Spain, while in virtue of the 2d, the aforesaid British subjects were prevented from settling on the coasts of Southern America and the adjacent islands.

Stipulations analogous to these were in force at that time with the other maritime nations, and it is worthy of note that even in what were called the contracts "*de asiento*," by which at different times Spain conceded to French and British subjects the right to introduce negroes from Africa into those parts, she always laid restrictions upon their admission to and trade with the coasts and adjacent islands in her possession, subjecting the importation of Africans to strict regulations.

It must be acknowledged, therefore, that Spain exercised jurisdiction to prevent foreign vessels from visiting the islands contiguous to this part like those of Lobos, access to which was always prohibited; and that if some of them eventually approached the same, they did so in violation of treaties, as Captain Collnett says in the history of his official voyage already mentioned, and were considered as smugglers and interlopers; and in this state of things the sailing of foreign vessels in these seas being necessarily rendered a very rare occurrence, it is not strange that repeated regulations are not to be met with, nor any instances of violations of treaties, and the application of penalties against infringing vessels, under the Spanish government, in regard to the visiting of these islands.

The commerce of these seas and coasts having been thrown open to foreign flags, the Peruvian government, as soon as it began to become consolidated, issued the decree of September 6, 1833, in order to prevent foreign vessels from fishing in the Peruvian islands and coasts of which the Secretary of State is informed, it being very remarkable that, in the very communication to which I am replying, it is acknowledged that the object of said prohibition was to prevent fishing by American citizens, who, as it is stated in the aforesaid communication, were in the habit of repairing to these islands.

Subsequently, on the 18th of November of the same year, 1833, an order for the regulation of commerce was issued; in the 20th article of which foreign trade with the Lobos islands is expressly prohibited under penalty of confiscation and condemnation.

It is not susceptible of doubt that the jurisdiction of Peru, if such were acknowledged, could not have lost force from the fact that the article was ascertained to possess value in foreign trade, as happened in 1840, in which it began to be exported, and consequently it is in-

dispensable to acknowledge the binding force of the decrees which expressly prohibit its exportation from those islands, it only being permitted from the Chincha islands, with the consent of the government previously obtained. These are the decrees of the 8th of December, 1841, and of the 21st of March and 10th of May, 1842, of which his excellency Mr. Webster also possesses information, and who says that he has seen them in the documents last published in England by order of Parliament, and they are so many additional acts of jurisdiction no less authorized than the former ones of 1833, and were so from the time they were issued, their binding force not being impaired by the circumstance that they may not have been brought to the knowledge of the government of the United States in a special manner, or by a direct and express communication, as perhaps there is reason to believe is indicated in the note which now occupies the attention of the undersigned.

An official publication cannot but be considered as an act of notification to the subjects of all nations, of the commercial legislation of a country ; still more, in so far as the United States is concerned—which republic has always had diplomatic and consular agents in Peru—to whom it has always been the practice to distribute the official paper in which the decrees and ordinances of the government are published.

Subsequently, in the year 1847, the government of Peru caused a minute survey to be made of the Lobos islands by a special engineer, Mr. Cartter ; and the result, of his explorations have been published officially, without any nation having contested this immemorial and habitual jurisdiction, whereby the government of Peru confirmed the accuracy of the boundary lines of its territory.

The official labors of Engineer Cartter were directed to the reconnaissance and hydrographical survey of the islands ; a geological description of them, and a calculation of the amount of guano which they might contain as taxable Peruvian property. It is seen that these measures, and the official description, preceded by a considerable length of time the discussion raised in England in relation to the Lobos islands, and they were made at a time when no one in the world disputed the authority of Peru over them.

Legal decisions of various kinds, and of a judicial and penal application, have given a renewed and confirmatory sanction to these prohibitions of foreign fishery and trade with the Lobos islands. For the obtaining information of them, the undersigned will refer to the collection of documents published by the authority of the British Parliament, and will designate as those most generally known, that of the English ship "Campeadora," condemned for having visited the islands for the purpose of fishing, with the knowledge and assent of the consul-general of England at Lima ; and that of the "Hibernia," also condemned for having proceeded to those islands without a license.

The details of these cases are so well known through the publication made in England, that the undersigned will not stop to enumerate them. That which has a material bearing upon the subject of this note is to make it appear that said vessels were subjected to a legal prosecution, for having infringed the Peruvian regulations which prohibit trade and communication with the Lobos islands, even to na-

tional vessels, unless with the permission of the government or authorities of Peru ; that the prosecution of said vessels was carried on with the knowledge of the consul-general of England, whose flag they bore ; and that the jurisdiction of Peru was practically exercised, assented to, and recognized.

The undersigned has deemed proper to enclose an authenticated copy of the suit against the "Hibernia," and of the note of the 1st of April, 1834, from her Britannic Majesty's consul-general, wherein he expresses his acquiescence in the rightful exercise of the jurisdiction of Peru, in respect to the "Campeadora ;" other documents also in regard to this subject have been published in an official manner at London during the present year ; the enclosed copy of the note to which the undersigned has alluded is enough to prove the existence of the fact, and the important circumstance of the exclusive jurisdiction of Peru, and naval police regulations in relation to the Lobos islands having been exercised without opposition.

It will also be proper to inform the chargé d'affaires that suits were instituted against two other vessels, the "Adelina" and the "Moro Quintana," for taking away guano from said islands ; the proceedings against said vessels are known and have been published in Peru.

If, after such complete evidence of Peruvian jurisdiction, any special consideration ought to be taken in regard to citizens and vessels belonging to the United States, as is urged by his excellency the Secretary of State in the note of August 21, where he remarks, "that this is not a question between Peru and other governments, who may have more or less admitted the rights of Peru, but a question between Peru and the United States ; the undersigned would represent that said note of the Secretary of State is based upon two circumstances which the undersigned cannot avoid contradicting.

The first is, that American citizens have been in peaceable possession of the right to fish at the Lobos islands for more than fifty years ; and the second, that when by decree of the 6th of September, 1833, foreigners were prohibited from using the fisheries, Mr. Larned, chargé d'affaires of the United States at Lima, made official objection to said decree, and his note upon the subject was not replied to.

As the undersigned has already stated in his note of the 9th instant, he will not hesitate to deny upon this occasion, also, that any distinction can be recognized between the right to fish in the seas surrounding the islands, and even between that of having the power to kill seals and even to dry the skins on the shore ; and that of removing the substance of the soil or the guano existing upon those islands ; and of claiming dominion over them, or assuming the jurisdiction of the sovereignty of the territory.

The undersigned will not, for one moment, allow that the citizens of the United States can have acquired this alleged right of fishery by peaceful prescription ; but meanwhile it is necessary to establish the fact that the inference which is drawn therefrom, as to the right to take away guano, cannot be considered as properly established on such principles.

Further above in this note the undersigned has shown that foreign fishery and trade were prohibited along the coast and islands of Peru

by the colonial laws and by treaties, and if any enterprises relating to those branches of industry were put into execution, it was, as is well known, under special concessions granted to merchant vessels who made importations under another flag, in order, especially during the time of the war of independence, to protect the neutrality of the flag as regarded the merchandise transported, and to prevent confiscations, which, from the very fact that they are exceptions, only prove the principle of prohibition, and the impossibility of establishing a right of a contrary tenor.

During the first quarter of this century the exercise of the sovereignty over these seas was disturbed by the war of independence; and, consequently, the few cases of fishery by foreign subjects along the islands and coast of Peru, which are endeavored to be adduced against the sovereign rights of this part of the world, can only be looked upon as irregular proceedings, and as taking improper advantage of the situation in which both the Spanish government and the independent authorities were placed, of being unable to make their maritime laws effectually respected.

This consideration will doubtless suffice to insure the acknowledgment, that those proceedings of American citizens, even if they were conducted up to the time of the consolidation of the independent governments, cannot serve as a basis for the lawful prescription of a right in their favor.

The Secretary of State also speaks of visits made to the Lobos islands by American vessels since 1793, but it cannot but be acknowledged, under the weight of the preceding considerations, that it is in evidence in history, and even of the present, that whatever other visits were made shortly before or during the war of independence, were induced either by special licenses, or were unauthorized, or, finally, were occasional acts unknown and isolated; or the consequences of an abuse for which neither the circumstances nor the lapse of time can furnish a foundation in right.

The fact is, that as soon as the independent government was regularly organized, the decree of the 6th of September, 1833, was issued. As soon as it was published, Mr. Larned, *chargé d'affaires* of the United States, addressed to the department of foreign relations a note, under date of the 30th of September, 1833, upon this subject.

That communication, which the undersigned had the honor to transmit to the *chargé d'affaires* on the 9th of the present month, did not contain any claim to vindicate a perfect right in favor of citizens of the United States; it said, in substance, that the decree of September might be considered as exhibiting no very friendly feeling. Its arguments were to the effect, that, in *permitting* American citizens to make use of the fisheries at those islands, the interests of Peruvians suffered no detriment; because the latter had not engaged in this branch of industry to any considerable extent. "That the innumerable creeks, bays, and havens of Peru would afford ample room for the whole to follow this harmless avocation with undiminished advantage;" that "fish of the cetaceous kinds are not caught on the 'playas,' but in the ocean, sometimes, perhaps, at a short distance only from them."

Undoubtedly, these expressions in the note bear no indication of a protest or of a claim to rights.

Subsequently, that document is still more expressive of its true meaning. "Therefore," said Mr. Larned, "*I have to request*, in the name of my government, that the decree in question may be reconsidered and so far modified as to permit to the citizens of the United States the pursuit of an occupation which they have been allowed quietly to follow for a number of years, to their advantage, and, it is believed, without injury to Peru."

As it is very apparent that the argument in the communication of Mr. Larned rests only upon the ground that Peruvian interests were not damaged, it is clear, both for this reason as well as for others advanced in that note, and their very language, that the chargé d'affaires of the United States considered this use of the fisheries as merely the consequence of a passing tolerance, and solicited and entreated its continuation, merely because it did not at that time injure the interests of Peru.

Notwithstanding this, the note of Mr. Larned was not left without reply, as is stated in the note of his excellency the Secretary of State. The undersigned has not only addressed to the chargé d'affaires a copy, but has exhibited to him the original autograph despatch which he sent at that time, and the note filed among the archives of this department; which, on the strength of this despatch, and by means of a decree issued to that effect in 1834, was addressed to Mr. Larned on the 13th of May of the same year, refusing the application; declaring that the prohibition of American citizens to fish, and the provisions of the decree of the 6th of September, were still in force, without either Mr. Larned or the government of the United States having ever addressed any reclamation or communication after having received said reply.

The prohibition, then, was assented to; and the toleration, if such there had been in some former instances, was suspended, and the said prohibition assented to tacitly, but in a binding manner.

Neither is the assertion correct, that, notwithstanding this citizens of the United States continued to carry on fishery at the Lobos islands. No foreign or national vessel has been permitted to visit the Lobos islands, at least since that time without a special license.

When, after the lapse of twenty years, not a case has occurred, as far as the undersigned is aware, where an American vessel has been allowed to visit said islands in search of seals, how much less can an allegation be made of the practice of visiting them for other purposes so essentially connected with a jurisdiction and usance founded upon territorial rights as would be the loading and exportation of guano.

On the contrary, all vessels which have touched at said islands without a license have been subjected to a prosecution, as having incurred the penalties of contraband trade.

As the undersigned does not for a moment doubt that in the argument of the government of the United States, their real importance will be attached to those cases where American vessels have been able to carry on the fishery business upon this coast under an acknowledged infringement of treaties and laws; neither does he doubt that such cases, after what has been so fully set forth in this note will not in

any manner be looked upon as legitimate precedents for the establishment of a right.

Even the very toleration of such practices should be considered insufficient to warrant such purpose, especially when it had been utterly broken up by the decrees of 1833. Since these were promulgated, that is to say since some twenty years, there is perhaps no known case where the fishery business has been carried on by an American vessel; and it is even incredible that one of them should have at least obtained a license from the Peruvian authorities to visit the Lobos islands. The same right, that is to say the right to fish in these seas, which cannot be supposed to have existed, would have become extinguished under the principles of universal law⁹ after a discontinuance or suspension of twenty years.

On the contrary, for the purpose of giving greater force to these prohibitions, a special decree was issued on the 5th of August, 1840, a copy of which is enclosed to the chargé d'affaires, wherein, while establishing regulations for the fishery business, and restricting it to Peruvian citizens only, it is forbidden to be carried on by any but natives of the country; and this decree has not in its application met with any sort of embarrassment or opposition whether officially or in events.

Annexed the chargé d'affaires will find the note of Mr. Ruden, consul of the United States at Paita for several years, who, by reason of his long residence in that place, is perhaps one of the best persons to give evidence upon this point. Mr. Ruden makes a very distinct declaration that it has never come to his knowledge that American vessels have fished near the islands, at least since 1833; as if, in order to carry on this branch of industry, it were necessary to do so in national vessels and through a license from the port authorities.

With the same intention of rendering effective the observance of the fiscal regulations which prohibit the withdrawal of guano, fishery, and commerce, and communication generally with those islands, even in national vessels, it is now some years that Peru has kept a vessel to cruise on that part of the coast.

The case is well known, also, of the seizure and prosecution conducted against the brigantine "Catalina," which, infringing said regulations, arrived at the Lobos islands, and was unexpectedly captured. To complete the proofs of this jurisdiction which the government of Peru has always uninterruptedly exercised over the Lobos islands, the undersigned will also mention the authentic and notorious fact of a special governor having been appointed for each one of those groups of islands, the same who now maintain there the authority of the government; this of itself being a fact sufficient to entirely exclude any attempt to refuse to acknowledge the rights of Peru, and to endeavor to make use of her islands by foreign subjects whoever they may be.

At the same period, that is to say, on the 18th of November, 1833, a commercial regulation was issued by the government, in the 20th article of which, as has already been stated, every vessel coming from foreign parts was prohibited from touching at the Lobos islands for any purpose whatever; and it is worthy of remark that this regul-

tion, wherein special allusion is made to those islands, which was not the case in the general prohibition in regard to fishery made on the 6th of September, was formally communicated to Mr. Larned, the chargé d'affaires of the United States, by a note from this department of foreign relations under date of the 18th of December, requesting him to give his government notice of the same, and enclosing copies for that purpose.

Mr. Larned at that time neither instituted any reclamation nor did he make the slightest demonstration against that prohibition, as would have happened if citizens of the United States had been in possession of an acquired right to communicate with the Lobos islands for any purpose whatever. The undersigned has also exhibited to the chargé d'affaires the original books which contain this correspondence.

After these conclusive proofs of the right of Peru to exclude vessels and citizens of the United States, as well as the vessels and citizens of any other nation, from holding commercial intercourse with the islands, the undersigned cannot avoid looking upon the regulation decrees of March and May, 1842, as effective prohibitions and substantial acts of positive jurisdiction; and he cannot view, as an impediment to that jurisdiction, or as a reason for considering it interrupted, the fact that the public agent of the United States at Lima refrained from communicating said prohibitions to the government at Washington.

The question with regard to the United States does not, therefore, in the opinion of the undersigned, possess a special character; or, rather, there is no question as to the rights of Peru over the Lobos islands under uniform regulations, and which apply alike to all foreign vessels and subjects.

The undersigned has shown in the course of this communication :

1st. That the dominion and possession of the Lobos islands, and also the enjoyment of them, indisputably belonged to Peru under the empire of the Incas : that is to say, to an organized and civilized nation, as is now admitted by the whole world, and whose rights were entitled to the respect of other nations with whom she might have commercial relations.

2d. That this title was transmitted from the aboriginal Peruvian nation to Spain by conquest; which, in whatever manner it may be looked upon by religion and philosophy, is, by the law of nations, a circumstance, the validity of which is admitted in the transmission of the rights of sovereignty acknowledged to be possessed by the kings of Spain; and that, from the kings of Spain, that title to the possession and enjoyment of the Lobos islands has been transferred to the Peruvian nation as a consequence of its emancipation.

3d. That the discovery of the " Lobos de Afuera " and " Lobos de Tierra " islands, and of their containing deposits of guano, is historically and officially proved, according to the best evidence, to have been made by the first discoverers and colonizers of these countries, and was contemporaneous with the discovery of America.

4th. That Peruvians have occupied the islands for all purposes of valid occupation, and have made use of said islands in so far as their sterile nature admitted.

5th. That the governments and laws of Spain and Peru have been

in the exercise of the right to exclude the vessels and subjects of other nations from the use of those islands for any purposes whatever.

6th. That the jurisdiction of the Peruvian regulations has received new strength and a practical application in such cases as have occurred without any nation having attempted to place in doubt the exclusive jurisdiction of Peru, nor the rightful title of dominion from which her jurisdiction is derived.

7th. That citizens of the United States have not acquired for their advantage the right to fish in the islands; but that, on the contrary, the government of the United States and its public agents in Peru have extended their assent, since the official notices were given, to the acts of jurisdiction and to the regulations which prohibited and put an end to the practice of certain acts relating to the carrying on of fisheries in these seas; which practice began to be introduced at a time in which the government of Peru was suffering embarrassments in its regular progress, and which at all times, considered as an abuse of that situation, were ultimately prohibited, and the prohibition respected until the present day.

The undersigned hopes that the chargé d'affaires cannot but admit, that in the course of time, new and multiplied proofs might be adduced of the dominion of Peru and of her acts of jurisdiction with respect to the Lobos islands. But the evidence already collected is considered more than sufficient to permit the full rights of Peru to be questioned for a moment.

The last orders issued by the government of the United States, being a reprobation of the conduct of the individuals who attempted to impose upon its rectitude and good faith, afford a striking proof of the sentiments of disinterested justice and mutual good will which have always governed its relations with Peru. This government appreciates those orders as it ought to do, and also the circumstance that care was taken to transmit them by a special bearer of dispatches, in order that its agents and naval officers might afford no sort of protection to those who may attempt to violate the territorial rights of this nation over the Lobos islands, characterizing such acts as constituting private war.

It is not for a moment to be doubted that the government of the United States, which has hastened to declare illegal and unworthy of protection acts which tend to violate the regulations and laws of Peru, by the forcible abstraction of guano from the Lobos islands, which undoubtedly amounts to a tacit acknowledgment of the sovereignty and exclusive jurisdiction of Peru over said islands, will remove every possibility of a renewal of similar attempts, opposed to the territorial rights of this nation, by expressing itself in more explicit terms upon that point.

Meanwhile, although it cannot be granted or supposed that such citizens of the United States as have, either through ignorance or intentionally attempted to usurp them, possess rights of any kind under any possible circumstances whatever, against either of the two governments, nevertheless, the chargé d'affaires is informed by special communication from this department that this government, influenced solely by the consideration it has always entertained for the United

States, has ordered that freight be paid under the new contracts entered into by the agents or consignees of the government for shipping guano on account of the latter at the Chincha islands, and conformably to the contracts of consignment with said agents; which is also to be the case with such vessels as may have sailed prior to the declarations and orders issued by his excellency the Secretary of State, which have already been alluded to, and so far as it may be compatible with the interests of the country and right and proper to be done, according to the circumstances under which said vessels sailed.

The documents to which the undersigned alludes in this communication, and which are transmitted to the chargé d'affaires in relation to this subject, are—

1. A copy of the "Comentarios Reales," of Garcilazo de la Vega.
2. A copy of the works of Antonio de Herrera.
3. A copy of the travels of Don Jorge Juan y Antonio de Ulloa.
4. Copy of the article in the Dictionary of Alcedo, relative to the Lobos islands.

5. Copy of the chapter in relation to the same from the voyages of Captain Colnett.

6. Copy of a chapter from the voyage of Captain Fitzroy in the ship "Beagle."

7. A copy of the 11th, 12th, 13th and 14th articles of the treaty of Madrid, of 1713, and of the 8th article of that of the peace of Utrecht.

8. The proceedings conducted against the English ship "Hibernia," transcribed from the original.

9. The note of her Britannic Majesty's consul general, in relation to the proceedings against the "Campeadora," is also transmitted.

10. A copy of the decree of the 6th of September, 1833, which prohibited the fishery of amphibious and cetaceous animals on the coast of Peru and islands adjacent thereto, is also transmitted.

11. The document relative to the request made by Mr. Larned, chargé d'affaires of the United States, to modify the preceding decree, and the refusal of the government of Peru, communicated to Mr. Larned in March, 1834, are contained in the complete copy of said record, which was transmitted to the chargé d'affaires with the note of the 9th of the present month.

12. The 20th article of the commercial regulations of the 18th of November, communicated to the legation of the United States, and the note in which it was also communicated is transmitted in copy, under date of the 9th instant.

13. A decree of the 5th of August, 1840, in which it is declared that fishing cannot be carried on along the coast of Peru, and the islands adjacent thereto, except by natives of the country.

14. The decree of December, 1841, relative to the prohibition to remove guano, unless with the knowledge of the government, and from the Chincha islands.

15. The decrees of 1842 in relation to the same matter.

16. Reconnaissance, measurement, and description of the islands by Mr. Cartter, engineer, commissioned by the government in 1847.

17. Note of Don Alejandro Ruden, consul of the United States at Paits.

The undersigned, upon this occasion, renews to the chargé d'affaires the sentiments of esteem and distinguished consideration with which he subscribes himself his obedient servant,

JOSÉ MANUEL TIRADO.

Mr. RANDOLPH CLAY,
Chargé d'Affaires of the United States.

[Translation.]

(From the "*Registro Oficial*" of May 8, 1852.)

DEPARTMENT OF GOVERNMENT.

I, José Rufino Echenique, president of the republic, &c., in consideration :

That it is necessary to exercise the greatest vigilance in the guano islands belonging to the State, with the view of preventing a contraband trade, or the fraudulent and illegal shipment of the guano, which now constitutes one of its principal sources of revenue ;

That, notwithstanding the repeated orders which have been issued forbidding the hunting or scaring away the birds which frequent said islands, fishing and other vessels which are in the practice of visiting them have often contravened those rules, thereby damaging the preservation of the guano deposits ;

That the abuses above mentioned make it indispensable that the government should indicate the authorities whose business it is to carry into execution the orders which it may issue in regard to said islands ;

That, as these islands happening to be at considerable distances from each other, it is impossible to place them all under the same jurisdiction, and as it would seem more appropriate to include them within the districts which they immediately adjoin—

Decree.

ARTICLE 1.—The guano islands belonging to the republic shall form a portion of the districts and provinces hereinafter specified.

The Lobos island, situated near the cape of the same name, in 5° 13' latitude south, shall be attached to the district of Paits and province of Piura.

The island of "Lobos de Tierra," and those adjacent thereto, situated in latitude 6° 27' south, shall be attached to the district of Lambayeque and province of Lambayeque.

The islands of "Lobos de Fuera," situated in latitude 6° 57' south, shall be attached to the district of Eten and province of Chiclayo.

The islands of "Malabrigo," in latitude 7° 49' 11" south, shall be attached to the district of Paijan and province of Trujillo.

The islands of Gusañape, in latitude 8° 36' 11" S., shall be attached to the district of Virú and province of Trujillo.

The island of Santa and the islands of "Terror," situated between latitude 9° 11' and 9° 17' 11" S., shall be attached to the district of Santa and province of Santa.

The islands of "D. Martin de Mazorques" and "Pelado," between $11^{\circ} 4'$ and $11^{\circ} 25' 11''$ S., shall be attached to the district of Huacho and province of Chancay.

The "Pescadores" islands, and those of Ancon, in latitude $11^{\circ} 46'$, shall be attached to the district of Carabayllo and province of Lima.

The "Hormigas" islands, in latitude $11^{\circ} 56'$, shall be attached to the province of Callao.

The three Chincha islands, in latitude $13^{\circ} 32' 11''$ S., will form a separate district, under the authority of the governor appointed therefor.

ARTICLE 2.—To preserve watch over the above mentioned islands, a sufficient number of coast guards shall be assigned, who shall be removed or changed, as shall be necessary.

ARTICLE 3.—In the largest and most advantageously situated of these islands, there shall be constructed barracks for the purpose of affording a comfortable habitation to the coast guard; and such boats or sailing craft as shall be deemed necessary for keeping up a communication between said islands and the main land shall be stationed there.

ARTICLE 4.—A vessel of war shall be specially assigned to cruise among these islands, which it must visit at stated periods, conveying to them once every month sufficient water and provisions for the sustenance of the coast guards residing thereon.

ARTICLE 5.—The prefects and coast governors, to whom the duty belongs, shall take care to establish the coast guards spoken of in the preceding articles; will have to carry out all measures determined upon in relation to said islands, and furnish a detailed statement of all that occurs thereon.

Let this be communicated and published.

JOSE RUFINO ECHENIQUE.
JOAQUIN J. DE OSMA.

LIMA, *May 7*, 1852.

[Note by Department of State.]

Documents numbered 1, 2, and 3, of the series accompanying Mr. Tirado's note of October 23, to Mr. Clay, being bound volumes, were not transmitted from the legation to the department, and are not, consequently, embraced herein.

No. 4.

To Mr. Tirado's note dated October 23, 1852.

[Translation.]

Historico-Geographical Dictionary of the West Indies, or America, written by Colonel Don Antonio de Alcedo, second volume; edition of 1787; article "Lobos."

"Another [island] on the same coast of Peru, in the province and jurisdiction of Sana, called Barlovento [windward] in order to distinguish it from

"Another of this province and realm called Sotavento, [leeward] by the side of Point Aguja."

A true copy.

FELIPE BARRIGA ALVAREZ,
Chief Clerk.

No. 5.

To Mr. Tirado's note of 23d October, 1852.

A voyage to the South Atlantic, and round Cape Horn into the Pacific ocean, for the purpose of extending the spermaceti whale fisheries, and other objects of commerce, by ascertaining the ports, bays, harbors, and anchoring berths in certain islands and coasts in those seas at which ships of the British merchants might be refitted. Undertaken and performed by Captain James Colnett, of the royal navy, in the ship Rattler.

On the eleventh day of June, at noon, I had got up the main as high as the isles "Lobos de Mar"*. I accordingly stood close in, within a mile or two of the shore, and then bore up for the isle, which we soon made, and got well in with it before it was quite dark, and then brought to with our head to the southward.

This isle, by my log, is sixteen leagues from the main, which is a much greater distance than is laid down in most of the charts. My expectation was enlivened, in common with every one on board, by the opinion that we should see some of our countrymen in the morning; and when we bore up at break of day, a considerable quantity of tar was seen floating on the surface of the water, a circumstance which strengthened our hope that we should find a vessel refitting there.

I had some intention of anchoring here myself, and having hove-to off the southwest part of the isle, I sent the chief mate to sound for a dangerous rock under water, over which the sea seldom or never breaks. It lies somewhere in the middle of the roads, and several whalers had struck on it, but I had not been able to procure the bearings of it. There was but little wind throughout the day, and the ship set considerably to the northward and westward, which opened the bay to us, when we were greatly disappointed at not perceiving any ship at anchor in it. However, before the boat returned in the evening, we saw a sail standing down on us, and it being hazy, as it generally is on this coast, the boat had at one time mistaken her for the Rattler.

The chief mate returned on board by seven in the evening, and informed me that he had not been able to discover the rock, or to catch anything but one turtle; from the fresh carcasses of seal which he had

* The isle was formerly the resort of the buccaneers, but there is no fresh water on it.

seen, he very reasonably supposed that a vessel could not have left the island.

The sail already mentioned kept standing towards us, and as night advanced showed a light; at eight, being a couple of miles off us, the whaling-master set out to board her, but discovering on a near approach that she was a Spanish vessel, he thought it right to return. I hauled on a wind for the night, as did the Spaniard, with a view of continuing together till morning; but the thick weather which was not dispersed on the return of day, prevented us from seeing each other again; nor did we perceive the land till ten a. m., when we found ourselves set during the night within a few leagues of the isles of Lobos de Tierra, which in certain positions bear such a resemblance to each other, that it was difficult to distinguish any difference between them; while from the uncertainty of the currents on this coast, it might have been as naturally conjectured that the current had set us as much one way as the other.

As I had no inducement to beat back again, nor any probability of accomplishing it without taking a great offing, I continued on my course, but never failed to consult with the whaling-master before I shifted my ground.

The isle Lobos de Mar is divided into two parts by a small channel, which will only admit the passage of boats, and where the tide is very rapid.

The isle Lobos de Tierra appears, towards the eastern point, to be much broken into small hillocks, while the land or main, near it, is low and visible only on a near approach.

During the short time I remained off these isles, the weather was so hazy as to prevent my making any accurate observation concerning them.

A true copy.

FELIPE BARRIGA ALVAREZ,
Chief Clerk.

No. 6.

To Mr. Tirado's note of October 23.

Narrative of the surveying voyages of his Majesty's ships Adventure and Beagle between the years 1826 and 1836, describing their examination of the southern shores of South America, and the Beagle's circumnavigation of the globe: London, 1839.

Appendix to Volume II. Page 265.

The coast continues low and sandy, similar in appearance to that of Lambayeque, to the distance of twenty-five leagues; an extensive range of table land, of considerable height, with broken, rocky points, then commences, and continues to Point Aguja, or the Needle. Fifteen leagues from Lambayeque, in an E.S.E. direction, lies a small group of islands, called Lobos de Afuera. These islands are a

league in length, north and south, and a mile and a half broad ; are about a hundred feet high, of a mixed brown and white color, and may be seen several leagues off. They are quite barren, affording neither wood nor water. There is a cove on the north side formed by the two principal islands, but with deep water and rocky bottom. Within this cove are several nooks in which a small vessel might careen without being interrupted by the swell.

These islands are resorted to by fishermen from Lambayeque on their balsas ; they carry all their necessities with them, and remain about a month salting fish, which fetch a high price at Lambayeque. There is no danger round these islands at the distance of a mile ; regular soundings will be found between them and the shore from fifty fathoms abreast of the islands.

N. 26° W. ten leagues from Lobos de Afuera lies the island of Lobos de Tierra, nearly two leagues in length, north and south, and little more than two miles wide. When from seaward it has a similar appearance to the former islands, and many rocks and blind breakers be round it, particularly in the west side, in eleven or twelve fathoms, sand and broken shells. A safe passage is said to exist between this island and the main, which is distant ten miles ; but as no advantage would be gained by going between, it was thoroughly examined by us.

A true copy.

FELIPE BARRIGA ALVAREZ,
Chief Clerk.

No. 7.

To Mr. Tirado's note of October 23.

Preliminary treaty of peace and amity between the crowns of England and Spain, concluded and signed at Madrid on the 27th of March, 1713.

ARTICLE 2.—His Catholic Majesty agrees that the subjects of her Britannic Majesty shall enjoy all the advantages, rights, and privileges which have been granted to the English nation, and which the latter enjoyed at the time of the death of the Lord King Charles II, whether in virtue of treaties of peace, or of commerce, or of letters patent, or of special acts, and particularly of the treaty of commerce of the year 1667, with the privileges granted to said Englishmen in the year 1645, as also of the treaty of commerce of America of the year 1670 ; and that there shall immediately be framed a tariff, by which shall be regulated the duties, payable on merchandise upon their introduction into Spain, which duties shall not exceed those which were established at the time of the death of the Lord King Charles II ; and that, in addition to this, his Catholic Majesty will grant to the English nation all the other exemptions, advantages, rights, and privileges, which are granted and not revoked, or which

may hereafter be granted to the subjects of France or of any other nation whatsoever.

ARTICLE 12.—His Catholic Majesty will, in like manner, inquire into the requests of my Lord Lexington, made through two memorials, praying for an elucidation and extension of some articles of commerce, as well in Europe as in America.

ARTICLE 13.—His Catholic Majesty promises that hereafter no license or permit whatever shall be granted to any foreign nation without exception, if any such, for what reason or pretext soever, to go and trade in the Spanish Indies; and his Catholic Majesty will cause the re-establishment of said commerce in conformity with, and on the footing of, the ancient treaties and the fundamental laws of Spain concerning the Indies; by which laws entrance into the Indies and trade with them are absolutely prohibited all nations, and solely reserved for the Spanish subjects of his Catholic Majesty; but even Spaniards themselves will be inhibited from trafficking, indirectly, in the Indies, with individual licenses or permits, granted under their names for any other foreign nation, and under what pretext or motive soever; his Catholic Majesty consenting that the foregoing and this general prohibition shall also be renewed and confirmed by a special and specific article of the treaties of peace that are to be concluded with all the nations which are at war.

ARTICLE 14.—Her Britannic Majesty has agreed immediately to issue the strictest prohibitions, and under the most rigorous penalties, to all her subjects, that no subject belonging to the English nation shall dare to pass on to the South sea, nor trade in any other portions of the Spanish Indies, save and except in those of the Slave Trade Company, which are allowed so to trade for negroes only, and solely at the stations of the north and of Buenos Ayres, in conformity with the conditions of said establishment, without engaging in any other illicit trade, under the same penalties; and her Britannic Majesty promises that this prohibition of his Catholic Majesty, and such as may be made by the other nations, shall be stipulated in the treaties of peace by a separate and specific article.

A true copy.

FELIPE BARRIGA ALVAREZ.

No. 7^b.

Treaty of peace and friendship between their majesties the King of Spain and the Queen of England, in which, among other things, the incompatibility of the Spanish and French crowns, united in one person, is stipulated for, as also the hereditary succession of Great Britain in the descendancy of Queen Anne in that of the electress dowager of Brunswick, and of her heirs, in the Protestant line of Hanover, concluded at Utrecht, July 13, 1713.

ARTICLE 8. There shall be a free use of navigation and commerce between the subjects of both kingdoms, as it was in other times during peace, and before the declaration of this war, in the reign of the

Catholic King of Spain, Charles the Second, of glorious memory, in conformity with the covenants of friendship, confederation, and commerce which were made between both nations according to ancient customs, letters patent, cedulae, and other acts specially done in this particular, and also according to the treaty or treaties of commerce which are now concluded, or which will immediately be so, in Madrid. And whereas, among other terms of the general peace, it has, by common consent, been established, as a chief and fundamental rule, that navigation and the use of the dominion of Spain should remain in the same state as it was in the time of said Catholic King, Charles the Second; in order that this rule may, in future, be observed with inviolable faith, so that it may not be broken, and that all causes of distrust and suspicions, concerning this matter, may be avoided and removed, it has been specially agreed and established that no license, nor any permission, in any name, or under any pretext, shall ever, directly or indirectly, be granted to the French, or any other nation, to navigate, to traffic, or to introduce wares, goods, merchandise, and other things, in the dominions of America, save what may be agreed upon by the treaty or treaties of commerce aforesaid, and by the rights and privileges known [*conocidos**] in the convention, commonly called "El Asiento de Negros," [slave trade establishment,] mention of which is made in article twelfth, excepting, also, whatever said Catholic King, or his heirs or successors, should promise by the treaty or treaties for the introduction of negroes in the Spanish West Indies after the said convention, for the "Asiento de Negros," will have been concluded; and, in order that the navigation and commerce to the West Indies may be more firmly and fully secured, it has further, and by the present, been agreed and settled that neither the Catholic King nor any of his heirs shall sell, cede, impawn, transfer to the French, or to another nation, any lands, domains, or territories of Spanish America in any portion thereof, or alienate the same in any manner whatsoever, from themselves, or from the crown of Spain; on the contrary, and in order that the dominions of Spanish America be preserved in greater integrity, the Queen of Great Britain promises that she will make it her concern and assist the Spaniards to the end that the ancient boundaries of their dominions in America be restored and settled as they stood in the time of said Catholic King, Charles the Second, if, perchance, it should appear that, in any manner or under any pretence whatsoever, they had been disturbed or broken into since the death of said Catholic King, Charles the Second.

A true copy.

FELIPE BARRIGA ALVAREZ,
Chief Clerk.

* An evident error of the copyist; the context shows that it should be *concedidos* (granted) in the convention, &c., &c.

[Translation.]

Document No. 8 to Mr. Tirado's note, dated October 23, 1852.

Manuel Padierna, advocate of the tribunals of justice of the republic and secretary to the most illustrious superior court of justice of the district of Libertad.

In compliance with the order in the decree set forth at the end of the note of the prefecture which is inserted at the commencement, I made a record of the papers, the tenor of which is, word for word, as follows:

PERUVIAN REPUBLIC, PREFECTURE OF THE
DEPARTMENT OF LIBERTAD,
Trujillo, June 28, 1852.

To the president of the most illustrious superior court of justice:

MR. PRESIDENT: By direction of the supreme government, it has been enjoined upon the prefecture to collect all the information which may exist in the department, tending to prove that the Lobos islands have from time immemorial been the property of the nation, and that it has had them in its possession. In consequence whereof, and being aware that there is in the tribunal a suit, prosecuted in the year 1845, against the English brigantine "Hibernia" for having landed at said islands in contravention of the provisions of law, you have been pleased to direct the secretary of the court to extract therefrom an authenticated copy of the following papers: of the initiatory order in the suit; of the formal declaration of the captain or pilot; of the indictment in first instance; and of the decisions which have been pronounced from the first up to the last instance, including the decision of the supreme court. It is so necessary that this information be immediately furnished, that I beg you will have the goodness to send them to me by the first mail that leaves Lambayeque. God preserve you.

JUAN MANUEL ITURREQUI.

TRUJILLI, *July 1, 1852.*

To the court which is cognizant of the cause.

[A rubric of the president.]

TRUJILLI, *July 1, 1852.*

Let a copy of the papers mentioned in the preceding note be made, inserting the note itself with summons to the government prosecutor and let it be transmitted as requested.

SR. BRACAMONTE. [A rubric.]

PADIERNA.

On the same day I delivered the preceding decree to the government prosecutor, D. D. Servacio Alvarez, and he made his rubric, to which I certify.

PADIERNA. [A rubric.]

PERUVIAN REPUBLIC.

Don Francisco Roman, captain of a corvette-of-war, and of this port.

Deeming it for the good of the service to make a summary investigation of the character of the voyage made by the English schooner "Hibernia" from Callao to this port, in consequence of being in possession of information that she has violated an express article of the commercial regulations; and also what article they have searched for of the property lost on the lofty island of "Lobos de Fuera," in consequence of the wreck of the Chilian brigantine "Manuel;" by issuing the proper mandate and initiatory process for making this investigation, and drawing up the proceedings on common paper, not having any stamped, with Don Mariano Sanchez, an officer of this coast guard, in the character of notary, in the absence of the secretary, who offered to take charge of the seal under oath. In testimony of which he signed with me on the 25th of the month of January, in the port of San José.

FRANCISCO ROMAN.
MARIANO SANCHEZ.

Thereupon, Mr. George Kinny, the captain of the English brigantine "Hibernia," accompanied with the appointed interpreter, D. José Humboldt, and the principal administrator of this custom-house, made their appearance, and there being present the assessor of the court, and myself, the notary, he asked him what his name was; of what country he was a native and resident; what was his age; domestic condition; and occupation. He answered that his name was George Kinny; that he was a native of England; a mariner; aged 27 years; unmarried; and his occupation that of captain of said brigantine, and he responds. Being questioned as to the declaration which he made before the captain of this port, which was read to him word for word, he said that he does not very well understand the declaration alluded to, as read by the present interpreter; but that the signature at the foot thereof is the same which he placed there, for which reason he considered it his own handwriting and instrument; that he perfectly comprehended the interpreter, Don Juan Doig, in regard to the questions and replies, except as to those which were made to him, in regard to the period of his sailing, by the captain of this port, in order to be inserted in said declaration, and he responds.

Having been asked whether the final license granted by the coast governor of Callao, under date of the 6th of January of the present year, which was exhibited to him by the same interpreter, is the same as the one with which he weighed anchor at the port of Callao, to make sail to this port, he said: that he could not be certain that the license which has been exhibited to him was the same as that with which he has sailed from Callao to this port, because that was confided exclusively to the supercargo of said brigantine, and he responds. Having been asked whether he exhibited the license in regard to which he has been questioned to the consul of his nation at Callao, in order that the latter might affix his certificate (*Visto Bueno*) thereto, he said: that as the supercargo has such license in his pos-

session, it is he who took charge of those formalities, as also of those with the office of the port captain, before he sailed, and he responds. Having been asked whether, during the interval between the day of his sailing from Callao and that upon which he arrived at this port, he had not touched at the "Alta de Lobos" island, and how many days he remained there, he said: that before entering this port, he, the declarant, had communicated by boats with the island of "Alta de Lobos," but never anchored there, and that he proceeded thence to the anchorage ground at this place, and he responds. Having been asked whether he met with any sailing craft at said island, and conversed with any of the fishermen, he said that he had not, and he responds. Having been asked how many days he occupied in sailing from the port of Callao to this, of San José, he said: that he does not know, and he responds. Having been asked whether the log-book ["Vitacora?"] which contains the courses and distances performed by him as captain of said vessel is the same one that he had under his charge, he said: that it is not his, nor does he recognize it, and he responds. Having been asked where the log-book was which he must have carried, in accordance with custom, whether he had it himself, or to whom he had given it, he said that he left it on board in one of his sea-chests, and he responds: That what he said and declared was the truth, which he affirmed and ratified, after his declaration had been read through the medium of the appointed interpreter, and he signed, which I testify.

JOSE HUMBOLDT,
Notary Helme.

At this point, it being requisite for the declarant to sign, and he making objection, a witness did so, to which I testify.

Witness:

GREGORIO PERALTA,
PEDRO PABLO DE ANTEPARAS.

Immediately I, the notary, summoned Mr. George Kenny, the captain of the vessel; he signed, to which I testify. At this point, he also objecting to sign, a witness makes appearance, to which I testify.

Witness:

GREGORIO PERALTA.
ANTEPARAS.

MR. ADMINISTRATOR: The prosecuting attorney appointed in this cause has examined it with considerable attention, and says that Mr. George Kenny, captain of the brigantine *Hibernia*, having been accused of two different offences, which are, that he had cast anchor at the island of Alta de Lobos, contravening the laws which forbid him so to do, and that he carried away from thence some property which had been wrecked at that place in a Chilean brigantine, it appears to be proved in the light of noonday that he has committed another offence; according to the statements made by the crew of the offending vessel, according to the log-book which has been faithfully translated at the capital of Trujillo, according to the witnesses who were present and

saw and communicated with him in the aforesaid place; and, finally, because of the shipwrecked property found on board the vessel before obtaining the requisite license, which circumstance constitutes in legal form the body of the offence. While there are supreme decrees which prohibit national and foreign vessels from having access from the islands, determined to be the property of the State, the 6th article of the supreme decree, issued on the 12th of March, 1842, distinctly specifies the island of Alta de Lobos, declaring the penalty of confiscation against any vessel that shall cast anchor thereat; and the brigantine "Hibernia" violated this order twice, on two occasions, where, with impudence and effrontery, she rested at that place, in order to accomplish the theft which she has committed upon the wrecked property; and, in order to conceal the time at which both offences were committed, her license, drawn up in Callao, was altered. Still further, the captain proceeded to outrage our laws and local authorities by cutting the cable of his vessel, in order to leave the port, notwithstanding the captain and subordinate officers were on board for the purpose of making an investigation into the conduct of the aggressor. The crimes above referred to, as set forth and attempted by said undersigned captain, having been clearly proved, I am of opinion that you should, in furtherance of the ends of justice, and in perfect accordance with the 6th article, to which I have referred, immediately inflict the penalty of confiscation upon the brigantine "Hibernia" for having cast anchor at the island of Lobos, and to continue the prosecution against said Kenny of the criminal suit appropriate to the crime of robbery and contemplated flight, together with the outrage upon the port captain. In regard to all which, you will make such decision as shall be most conformable to law and justice.

DON FRANCISCO HERRERA.

LAMBAYEQUE, *March 1, 1845.*

LAMBAYEQUE, *March 7, 1845.*

Having examined the papers, and considering, 1st: That Mr. George Kenny, captain of the English brigantine schooner "Hibernia," having sailed from the port of Callao bound for that of San José, of this city, he first cast anchor at the island of "Alta de Lobos," without any permission from a competent authority, where he remained several days, searching for the goods and fragments of the wrecked brigantine "Manuel," and in communication with the fishermen who were found there. 2d. That, by the affidavits made by the crew of the above-mentioned vessel, by the notices published in the "Comercio" and "Universal" newspapers and by the log-book which the captain carried with him on his trip, it is rendered evident that the brigantine effected her departure from Callao on the 14th of November last past, and not on the 8th of January of this year, as appears in the license granted by the governor of that port, where the date, both of the month and year, and an erasure made upon the paper. 3d. That, notwithstanding there is to be found on the 55th leaf the license granted by the sub-prefecture at this place to Don Francisco Xavier

Delgado, authorizing the captain of the "Hibernia" to visit the island for the purpose of searching for the property which he had lost through the wreck of the brigantine "Manuel," there is no reason why it should possess any validity in this case, in consideration that it was executed on the 13th of January, after the vessel had been anchored at that place some two months. 4th. That the captain of the port being engaged in an official visit on board of the "Hibernia," in compliance with his duties, the captain of that vessel attempted to interfere with him by cutting the cable so as to make sail, which he was unable to accomplish on account of the energetic measures which said port captain adopted. 5th. That captain, instead of using legal remedies in his defence, has only availed himself of others suggested by malice, denying his own papers, and in particular his log-book Vitácora, in which he has given a minute account of former voyages, one of them being that which he made from Panama to Callao in seventy-one days. For these reasons, and others to be derived from the papers in this cause, to which I refer, in conformity with the 114th article of the commercial regulations, with the sixth amendment made to them by supreme decree of the 12th of March, 1842, and with the 15th article of the supreme decree of the 21st of said month and year, and with the report made by the government prosecutor, administering justice in the name of the nation, it is declared, in the first instance, that the English brigantine schooner "Hibernia" has incurred the penalty of confiscation, with that of her cargo; in consequence whereof the proper officer is ordered, in compliance with the provisions of the 139th article of said regulations, to make this known to the parties, and report to the department.

FERNANDO, *Ex Helme.*
BARBARAN.

Before me:

PEDRO PABLO DE ANTEPARA.

—
Court of the First Appeal.

LAMBAYEQUEL, May 26, 1845.

Having read the papers, and taking into consideration—1. That the proceedings taken by the captain of the port of San José, Don Francisco Roman, are null and void, because he had no jurisdiction in the case, nor was any summons given, and because said captain had an interest in the confiscation of the English brigantine schooner "Hibernia," and has not exhibited any evidence derived from her log-book, from the fact that there is no proof that said book is the same which the captain of the above mentioned vessel, Mr. George Kenny, carried with him, and as the license and crew-list of said brigantine, the alterations in which papers are not proved in any manner, have no bearing upon this question, which is also the case in regard to the cutting of the cable, and making sail when the search visit was made. 2. That the native sailors who have made affidavits are wanting in the qualifications of capacity and impartiality, be-

cause they are under the control of the captain of the port, who is interested. 3. That, by No. 1, chapter 19th, of the ordinances of Bilbao, which accord in this respect with the 35th provision of the consular ordinances of the capital of Lima, it becomes the duty of the government to protect vessels whose purpose is to search for money and wrecked goods, for which reason no blame can be attached to the brigantine "Hibernia" in being employed for this purpose, especially after the license which appears on the 55th folio had been obtained from the chief of the Province, which license was complied with by the principal administrator and port captain of San José, notwithstanding that both of them were previously aware that said vessel was stationed at the island of "Alta de Lobos," as is proved from the affidavit exhibited by Captain Kenny, the additional fact being added, that he displayed the property sought after in the principal custom-house, as appears from the memorandum on folio 74, which removes all suspicion of bad faith. 4. That the 144th article of the commercial regulations is inapplicable to this case, because the island of "Alta de Lobos" is not included in the list of smaller ports and inlets which it was intended to affect by such prohibition, which was afterwards extended to said island by the supreme decree of the 12th of May, 1842, which would have been unnecessary if said island had originally been included therein; and also because the privilege of pursuing the occupation in which he was engaged is authorized by several regulations, which have not been abolished. 5. That no notice was given to Captain Kenny of the supreme decree of the 12th of March, 1842, the additional articles to the commercial regulations contained in which ought to have been brought to the knowledge of said captain, in compliance with the 8th article of said commercial regulations, the injunctions expressed therein not being obligatory upon such subjects of another nation as have not received notice thereof in due form. 6. That the 126th article of the above-mentioned commercial regulations, which designates the individuals who are to compose the court of first appeal, does not permit the appointment of a third person in the character of assessor or otherwise, either before or after the appointment of the "diputado de comercio" and justice of the peace, unless he be a merchant. For these reasons, administering justice in the name of the nation, we make our decision, revoking in all its parts the verdict appealed from, and declaring Captain George Kenny acquitted upon every charge, to whom the English brigantine schooner will be delivered up, with all its cargo, leaving him his undisturbed right to claim damages from whomever he may have incurred them.

Let notice be given of this, and let it be brought to the knowledge of the colonel prefect of the department.

MATIAS ZAVALITA.
 JOSÉ MIGUEL BACA.

Before me.

PEDRO PABLO DE ANTIPARAS.

TRUJILLO, *June 9, 1845.*

Having read that which is set forth by the government prosecutor: In consideration—1. That although it has been proved that the English brigantine “Hibernia” cast anchor at the island of “Alta de Lobos,” in contravention of the provisions of the 6th article of the supreme decree of the 12th of March, 1842, her captain, George Kenny, was not aware of the contents of said article, through the negligence of the lieutenant of the coast guard at Callao, Don Miguel Urbina, who did not deliver to the captain the regulation which is given to every foreign vessel, as may be seen by the report on the 135th folio, exhibited by the commandant of said coast guard, Don Augustin Nestares. 2. That the government, in prohibiting vessels from casting anchor at said island, ordered that information of the same be given to captains of vessels, for which purpose it directed the amendment of said commercial regulations, taking the precaution by this means that foreigners should be informed of the restrictions to which they were subjected. 3. That although Don George Kenny alleged, in his petition on folio—that he had received no notice of said article of the decree of the 12th of March, 1842, he did not actually prove it until this suit in the third instance, in which he presented the report of the commandancy of the coast guard of Callao, engrossed on the 135th folio, which is also admissible in the second appeal, according to the meaning of the 34th law, title 16, section 3. 4. That the captain of the port of San Juan, Don Francisco Roman, in entering the complaint against the brig Hibernia for having cast anchor at the island “Alta de Lobos,” as has been made to appear by the testimony of seven duly qualified citizens, natives of the country, has discharged the duties which his office imposed upon him. 5. That the misdemeanor committed by Captain Kenny, in anchoring said vessel at the Lobos islands, originated in the neglect, to which attention has been called, of the lieutenant of the coast guard of Callao, Don Miguel Urbina, who did not comply with the provisions of article 8th, section 1st, of the commercial regulations. For these reasons the decision in the first instance, on both sides of the 61st folio, dated on the 7th of March last, is revoked; the sentence declared on the 26th of the same month of March, engrossed on the 103d folio, is confirmed, so far as it absolves Captain Don George Kenny, and orders the delivery back to him of the brigantine “Hibernia,” with its cargo; and the provision leaving him at liberty to sue for damages which he may have incurred in this matter, is revoked. Let notice of this be given, and let a report be made to the supreme government, in conformity with the 124th article of the commercial regulations. [Three rubrics.]

The preceding decision was given and pronounced by Señors Doctor Don Apolinar Bracamonte, member of the most illustrious superior court of justice; Don Pedro Lacomba, administrator of this principal treasury; and Don Juan Manuel Gonzales, commercial deputy; and the president and members of the court of second appeal, in executions and confiscations, it having been discussed and read in public in the presence of the party, of the solicitors, and of the doorkeeper, to which I certify.

MANUEL PADIERNA.

LIMA, May 16, 1851.

On reading the above, in conformity with the opinion delivered by the prosecuting attorney, and in consideration, 1. That the English brig "Hibernia" weighed anchor at the port of Callao on the 14th of November, 1844, with Lambayeque for its destination, as is accredited by the certificate on folio 85, which rectifies the amended date in the month and year of the license on folio 8th, the same which was presented by the captain with the alteration referred to. 2. That it being prohibited to cast anchor at the island of "Alta de Lobos," in accordance with the supreme resolution of the 12th of March, 1842, said brig cast anchor at said island before the passage of the law of the congress of the State, remaining there many days, as appears from the statements made in the summary. 3. That between March, 1842, and November, 1844, nearly three years elapsed after the publication of said supreme resolution, a period much greater than the limit of ten months assigned by the 153d article of the commercial regulations, and which applied to such vessels as arrived at the ports of Peru. 4. That in order to produce the desired effect without causing any antagonism with the provisions above referred to, the certificate on folio 135th, made by the commandant of the coast guard, was indispensable, in order that it should be proved that the brigantine Hibernia came at that period to Callao for the first time, which does not appear in any manner. For these, and other reasons, which are manifest in the papers, the sentence pronounced by the court having jurisdiction in the second appeal in the commission of liberty, on the 9th of June, 1845, engrossed on folio 142, which confirms that upon folio 103, which acquits Captain George Kenny, and orders that the brigantine "Hibernia," with its cargo, be restored to him, under charge of infringing the articles alluded to. The cause is hereby again replaced in the state in which it was when the first decision was pronounced, and the papers are to be returned. Five signatures of Señors Aranibar, Tudela, Laro, Leon, Esteños.

The preceding order was proved, signed, and issued on the day of its date by Messrs. the President and Vocales of this supreme tribunal, who subscribe to it in conformity with the provisions of the 125th article of the constitution of the republic. The opinion of Señor Tudela was, that it was not null and void. That of Señor Laro, that it was null and void, and that the blame rested on the judges. The witnesses of this were the relator, the procurators, and the sheriff of said supreme tribunal, to which I certify. This is a true copy of the original papers, to which I refer for its correctness.

MANUEL PADIERNA.

TRUJILLO, *July 5, 1852.*

A true copy.

FELIPE BARRIGA ALVAREZ,
Chief Clerk.

No. 9.

To Mr. Tirado's note of 23d October.

[No. 33.]

BRITISH CONSULATE GENERAL,
Lima, April 1, 1834.

SIR: The Peruvian minister will, I am sure, readily credit the sincere desire with which I am animated to prevent, by timely warning, advice, and by every means in my power, any of his Majesty's subjects from infringing the laws of Peru, or treating with disrespect the constituted authorities.

The Peruvian minister, however, cannot be ignorant of my very limited means to effect these objects, and that it cannot be possible for me on all occasions to prevent abuses of this sort, however much I may regret them.

In respect to the proceedings of the British ship "*Campeadora*" at the islands of Lobos, and subsequently at the port of Paita, to which the Peruvian minister calls my attention in his despatch of the 28th of last month, I beg to inform him that, on the publication of the supreme decree prohibiting in future to foreigners the fishery of seals and whales on the coasts and islands of Peru, that I remitted a copy of the same to her Majesty's government, and that as yet I have received no instructions thereon.

From the information which has been communicated to me, it appears that the "*Campeadora*" was not warned to desist from fishing on the islands of Lobos by any Peruvian vessel of war, or by any Peruvian authority—none, indeed, existing on those desert islands; and which warning is customary in cases when the privilege of fishing has long existed, and is suddenly stopped by the power claiming the exercise of dominion over the fishery.

In cases when the foreign vessel arrives direct from countries where, on account of the unexpected and sudden publication of a decree of prohibition, that decree could not possibly be known at the period of the vessel's departure, a notification of its existence and a warning to the vessel to desist from fishing would necessarily be required to insure her condemnation in a court of law for its inobservance; but the decree of the Peruvian government affords no time whatever for its effects to come into operation as regards vessels so circumstanced. The case, however, of the "*Campeadora*" is different; for the master might have known of the existence of this decree during his stay at Callao, and it was from no "generosity whatever, or of any considerate" feeling, that this vessel escaped from seizure by the Peruvian authorities.

I have been further assured by parties whose evidence I cannot hastily reject, that it was the captain of the port of Paita himself who offered to allow the vessel to proceed to sea unmolested on receiving a bribe of eight hundred dollars, and not, as he has since alleged, that this sum was offered to him by one of the companions of the master for that purpose. The bribe, however, was refused to be given. The truth of this statement might have been proved, had the

complaint of the captain of the port of Paita, which is dated the 21st of December, been forwarded to this consulate general at an earlier period, instead of allowing three months and three days to elapse previous to any communication on the subject being made, and when in all probability the vessel has returned to England.

I have the honor to remain, your obedient, humble servant,
BELFORD HINTON WILSON.

Mr. JOSÉ MA. CORBACHO,
Minister of the Government for Foreign Affairs.

A true copy.

FELIPE BARRIGA ALVAREZ,
Chief Clerk.

[Note by Department of State.]

Documents numbered 10 and 11 of the series accompanying Mr. Tirado's note of 23d October, 1852, to Mr. Clay, will be found as accompaniments to Mr. Clay's No. 111, *ante*.

Document numbered 12 of Mr. Tirado's series, being the *twentieth* article of the commercial regulations, will be found incorporated in the 22d paragraph of Mr. Clay's same despatch.

No. 13.

To Mr. Tirado's note of October 23.

DEPARTMENT OF WAR AND OF THE NAVY.

Citizen Augustin Samara, Grand Marshal, Restorer of Peru, President of the Republic, &c., &c.

Whereas the carrying on of sea-fishery on the coasts and in the islands of the republic is an exclusive privilege of Peruvian citizens;

Whereas the absence of a law governing the exercise of this privilege has given rise to abuses equally detrimental to the citizens and to the public treasury, on account of frauds committed under the pretext of such fishery— I decree :

ARTICLE 1. The pursuit of sea-fishery on the coast of the republic and in the adjacent islands is exclusively reserved for the natives of the State.

ARTICLE 2. Its prosecution requires that one shall be a native Peruvian, or a constitutionally naturalized citizen; and the exercise of the prerogative is expressly forbidden all such as shall not possess said qualities.

ARTICLE 3. All vessels not Peruvian are prohibited from fishing or

the coasts and in the islands belonging to the State; and any vessel found fishing one league distant outside of the points named and prohibited, shall be liable to confiscation, and its value shall be distributed in conformity with the regulation of prizes.

ARTICLE 4. No fishing vessel shall be licensed to sail from any port of the republic, or be allowed to go into the fishing trade, unless its crew shall be made up of one-third, at least, of native Peruvians, and the other two thirds of naturalized citizens.

ARTICLE 5. No national fishing vessel shall be allowed to touch at any port of the republic, without a license to that effect. Any vessel herein infringing shall incur the penalty prescribed in the third article.

ARTICLE 6. Any master of a vessel who by gale, stress of weather, or any other disaster of the sea, may be compelled to put into any of the ports of the State without a license, shall, after such entrance, set forth before the harbor-master the reasons which compelled him so to put in; and he that shall fail satisfactorily to account therefor, and against whom fraudulent intent may be proved, shall pay a fine of one hundred dollars.

ARTICLE 7. The harbor-masters shall grant licenses to fishing crafts that do not exceed ten tons burden, which may apply to fish within the limits of their jurisdiction. But vessels of greater burden, or such as are intended to carry on the fishery within more extended limits, shall procure their licenses from the higher authorities, within the control of which the port may be classed; except in the port of Callao, from which licenses will continue to be granted as heretofore.

ARTICLE 8. The documents and papers under which fishing vessels shall put to sea shall be the same as those with which other national vessels are provided, with due regard to their burden, their traffic, and existing navigation laws.

ARTICLE 9. The harbor-masters shall grant to them their registers, in consideration of the fact that for the majority of them it would be both difficult and expensive to apply to the general department of marine. The head of the department, however, shall provide a separate registry of the number of such grants, in accordance with the report which the harbor-masters are required to make to him.

ARTICLE 10. Fishing vessels are exempted from tonnage, anchorage, and clean bill duties; but they shall pay to the harbor-master the fee to which he is entitled in virtue of the existing tariff.

ARTICLE 11. Skins, sperm oil and fish are hereby declared to be duty free, as are also other articles which Peruvian fishermen may introduce or export in the exercise of the fishing trade on the coasts and in the islands of the republic.

ARTICLE 12. Any fisherman who shall take from foreign fishing vessels articles such as are described in the foregoing article, and attempt to introduce them or export them from the State, as obtained by him in his prosecution of the fishing trade on the coasts and in the islands of the republic, shall forfeit, in behalf of the State, the vessel and its cargo, and he shall forever be prohibited from sea pursuits, or from residing in Peruvian ports.

ARTICLE 13. The informer, in matters set forth in the preceding article, shall receive one-half of the proceeds of the confiscated vessel and goods.

ARTICLE 14. The present decree does not include canoes, rafts, or other small crafts engaged in fishing for the daily consumption of the settlements. They shall, therefore, continue in the free pursuit thereof as heretofore, and without any charge.

ARTICLE 15. The present decree shall be submitted to the ensuing legislature for its approbation; taking effect, however, and provisionally, from the date of its publication.

The secretary of state for the department of war and of the navy shall see that it be enforced, printed, published, and circulated.

In Lima, on the 5th of August, 1840.

AUGUSTIN GAMARRA.
J. J. SALAS.

A true copy.

FELIPE BARRIGA ALVAREZ,
Chief Clerk.

No. 14.

To Mr. Tirado's note of 23d October.

LIMA, December 8, 1841.

Considering that the contract made with Don Francisco Quiroz for the extraction of guano from the islands has been declared void by the decree of the 27th of November last for causes adduced, in consequence of the representations of the council of state, of the decision of the supreme court, and of the concurrence of Quiroz himself, and considering that the interests of the treasury requiring that application should be made to merchants to take the guano for sale on commission, or upon any other footing that might prove advantageous, according to the official notices and invitations published through the newspapers, and the propositions which were submitted not having been acceptable on account of the trifling benefit which the national treasury would be likely to derive from them, as may be seen from those which are filed with these proceedings—

The government deems it proper to enter into contract with Don Francisco Quiroz and Don Aquiles Allier, under the following conditions and terms:

First. The contract made with said Quiroz having been declared void and of no effect, he has no right or claim to the sum of forty thousand dollars, which he delivered in cash and in orders on the mint, in pursuance of the indenture of the 23d of December, 1840, in consideration that the profits derived from said contract for the expired year inured to his benefit.

Second. From this date the exclusive privilege of exporting guano to Europe shall be enjoyed by the state, in partnership with Quiroz and Allier; and for a period of five years the net proceeds will be divided in the manner following: For the first year, a dividend, obligatory on the part of the company, of sixty-four per centum to the state, and of thirty-six per centum to the grantees aforesaid; and for the four ensuing years, one-third of the net proceeds to said grantees, and the two remaining thirds to the state.

Third. In consequence of the preceding article, the operations of the company include the cargoes of guano that may be exported in the vessels which are at present in the port of Callao with the object of taking in guano, as well as the cargoes which may be taken out by other vessels which may come in for that purpose.

Fourth. Quiroz and his partner are bound to furnish the government with whatever data and information may be required at their hands relative to contracts for and sales of guano, charter parties of vessels, consignments, and expenses of what nature soever, in order that the government may frame a definite judgment of the business.

Fifth. Each and every vessel taking in guano is held to procure its final clearance from the Callao custom-house, and no other shall be, in any case whatever, authorized to deliver such clearance.

Sixth. For the present, guano is permitted to be extracted from the islands of the north and those of Chincha only; and vessels going thither to take in load are held, in the first instance, to obtain a permit from Quiroz and his partner, who are required immediately to report said license to the secretary of state, accompanied by a duplicate of the contract made with the master of the vessel, a statement of the period of its departure, with one of the bills of lading, to be signed by the captain of said vessel.

Seventh. The government has the power, at the expense of the company, and as it may deem expedient, to detail agents to inspect the work of extraction from those localities where the guano is taken, and to prevent its smuggling in the islands and other points of deposit.

Eighth. All the tools, implements, boats and other appliances now necessarily used in carrying on the work of extraction, an inventory whereof Quiroz and his partner are held to furnish, become, from this date, common to the partnership, without any claim of theirs to compensation therefor; and at the expiration of the contract, said tools, &c., shall revert to the benefit of the state.

Ninth. Quiroz and his partner are bound to have at Callao, within a period of twelve months, two steamers of more than four hundred tons each, and of suitable power, to be used in preventing the fraudulent extraction of guano. It is understood that the construction of said steamers is to be such as to make them adaptable to purposes of war, and that each of them shall be supplied with a thirty-six pounder pivot-gun, and the necessary accommodations for coal. The cost of said steamers shall be defrayed out of the funds of the partnership, and at its expiration, they shall revert to the benefit of the state; but should said partnership not continue beyond the term of the first year, then, and in that case, the whole cost of the vessels shall fall exclusively upon the state.

Tenth. The employés, agents, and commissioners engaged in the sale of the guano may be removable by the government, upon an agreement with Quiroz; but for the present, those who have actually been engaged in the management of the guano may continue in service so long as there is no reason for their removal.

Eleventh. Quiroz and his partner are held to furnish the secretary of state with the correspondence which they address to their representatives and agents in Europe, and by which they convey to them in-

structions relative to the sale of the guano. They are also required to notify him of the result of the disposal of each and every cargo, and to submit the correspondence received from abroad from such agents.

Twelfth. Upon exhibit of the documents to which the foregoing article refers, an annual balance of the accounts of the company shall be struck, in order that the government may dispose of the profits which may appear to its credit.

Thirteenth. Quiroz and his partner, by the present, bind themselves to pay into the general treasury, within the term of four days, and on account of such profits, a sum of eighty-seven thousand dollars, (\$87,000,) and a further sum of fifty thousand dollars on the eighth day of each and every month for four months. As a compensation for this advance, the government grants permission to Quiroz and Allier, for their private account, and this once only, to load with guano the ship *Rosa* or *Scandinavia*, now in the port of Callao, and which Quiroz, individually, is to have nationalized.

Fourteenth. Whereas the extraction of guano is not allowable from any other points than those of the islands of the north and of the Chinchas during the survey of all the localities in which this substance is found, in pursuance of the decision of the council of state of the 24th of November last, directing an examination, in order to ascertain how far it is exhaustible, which reconnaissance, measurement, and estimate will have to be completed within the period of a year: it is conditioned, that should such examination prove that the guano is likely to fail, the present contract shall not be so construed as to cover the exportation of more than twenty thousand tons.

Fifteenth. The extraction of guano from any point wheresoever it may be found is free, if extracted for the uses of the agriculture of the country, and will continue up to the present without any charge whatever; but whenever it shall be discovered that vessels engage in this trade and tranship or convey the guano abroad, they will be liable to confiscation, and to the other penalties enacted against the defrauders of the national revenues.

Sixteenth. All controversies or incidents which may arise under the present contract, be they what they may, or come they from what source soever, are subject to the decision of the supreme court, in virtue of its constitutional powers, and its decrees shall be vigorously and strictly maintained.

Seventeenth. Of the profits which may inure to the state from this transaction, the government will determine what portion will have to be applied to the foreign debt, previously entering into the necessary arrangements with its creditors to secure its payment, in which neither Quiroz nor Allier will be entitled to intervene, unless thereto authorized by the government.

Eighteenth. Francisco Quiroz and Aquiles Allier bind themselves in their possessions, present and future, expressly mortgaging them, for the fulfilment of this contract; and the state, by reason of the advances which it may receive from them, and in consideration of the expenditures which they may incur in the exportation of guano, hypothecates to them the guano now lying and being in the island from which its exportation is carried on.

Let this be registered in the superior court of accounts ; be referred to the general treasury, in order that it may direct the issuance of the respective document, with date, and let return of the proceedings be made to the department of state.

[Rubric of his excellency.]

CANO.

A true copy.

FELIPE BARRIGA ALVAREZ,
Chief Clerk.

No. 15^a.

To Mr. Tirado's note of October 23.—Decrees of 1842.

TREASURY DEPARTMENT,
Lima, February 22, 1842.

The substance known under the name of guano, in whatever localities it may be found, being the property of the state, and the government having been informed of its existence in the islands of Huanāpec, and others of the Department of Libertad, before the discovery claimed by Don Cecilio Gonzales, Don Joaquín Saavedra, Don José Odonovan, and Don José Alcantara, it is declared that the aforesaid have no right to what they claim under the mining ordinance, which is not applicable to cases of this nature.

Let this be communicated to the prefect of the Department of Libertad, registered and promulgated.

[Rubric of his excellency.]

CANO.

Quiroz, Allier & Co., Guimirol, Ponmaroug & Co., and Gibbs, Crawley & Co., having made representations that the prefect of the Department of Moquegna has sold a quantity of guano, in order to apply its proceeds to the support of the troops under his authority, notice whereof was given to the applicants through various private letters, the supreme government has deemed it proper to issue the following decree :

LIMA, March 12, 1842.

Although the government are not officially informed that the prefect of the Department of Moquegna has made sale of any of the guano extracted from localities in said department, still, let him be notified, that for no reason or cause whatever can this substance be sold, in view of the fact that the government has entered into a contract of partnership with the applicants, to whom they have granted the exclusive right of export ; that if, therefore, the requirements of war in that department compelled him to the necessity of selling a few tons, the measure cannot be ratified or be deemed of effect, and that it is, therefore, declared void, as conflicting with article fifteenth

of the decree of the 8th of December last, published in the columns of the "Peruano," No. 52; that, under this supposition, such guano as may have been shipped will be deemed to have been exported for account of the company, and the parties in interest are at liberty to prosecute their right to indemnity before the government for the moneys which they may have laid out; that it is hereby and finally declared that should any one, notwithstanding the existing orders, attempt to export guano, he shall be liable to the penalties contemplated by said article of the decree above mentioned. For better fulfilment of the articles of agreement, the members of the company shall, in the shortest delay, furnish the vessels which they have promised and bound themselves to purchase, for the purpose of preventing the fraudulent guano trade. Let this be registered and published.

[Rubric of his excellency.]

CANO.

No. 15^b.

DEPARTMENT OF FINANCE.

Citizen Manuel Menendez, president of the council of State, invested with the executive power of the republic.

Whereas it is urgent that some measures should be adopted to prevent smuggling of guano to the prejudice of the interests of the state, and at the same time to control the extraction and sale of that substance indispensably required by the agriculture of the country, with the concurrence of the council of state, and in virtue of the 26th delegated power of article 87th of the constitution, I decree:

ARTICLE 1. Every national vessel now engaged in the guano trade for the use of agriculture in this country shall, within a period of three months, be entered anew in the registry of the port to which it may belong, and the master thereof shall accordingly advise the general department of marine. In future no vessel shall be entitled to carry on this trade without said formality.

ARTICLE 2. The national vessel that shall fail to be registered within the period of said three months, and yet shall be engaged after such period in transporting guano, shall be confiscated.

ARTICLE 3. For the present, and while the exploration ordered is being made, the island situated north of Chincha and the Tents of Pica, are the only points from which guano can be taken by national vessels; and all such as may take it from other points or islands of the coast, save and except the island situated north of Chincha and of the Tent of Pica, shall be confiscated.

ARTICLE 4. Every owner or master of a national vessel intending to take in guano from the island north of Chincha, will apply to the deputy collector of the Pisco custom-house, on ordinary paper, [paper unstamped,] in order that the necessary permit may be issued to him, free of cost; this on condition, however, that, having taken in his cargo, he shall return to the same port to take out his final clearance.

ARTICLE 5. National vessels intending to take in guano from the Tent of Pica will obtain their license from the collector of the customs at Islay, if the guano is taken in for consumption in the department of Arequipa, and from the collector of the customs at Anca, if for the consumption of the department of Moquegna. In the former case the master shall obtain his final clearance at Islay, and in the latter at Anca, if they carry guano to be unloaded at some minor port or inhabited cove in said departments.

ARTICLE 6. Immediately upon the arrival of the vessel at the port for which the permit has been granted, the master of said vessel shall present the license to the collector or deputy collector, who, upon exhibit of the register, shall endorse on said license, in letters, and in no case in figures, the date of the vessel's sailing, the number of bushels or tons of which its cargo is made up, and the port of destination. The licenses shall be numbered and cut out of a book prepared for that purpose, the pages of which will be checked by the secretary of state. A note shall be made on the margin of said book as on the back of the permit, in letters and not in figures, of the number of said permit, the number of bushels or tons which go to make up the cargo, the place of its destination, and the date of the vessel's departure. The book, so soon as filled up, shall be transmitted to the department of state, to be filed in the superior court of accounts.

ARTICLE 7. The collectors of customs at Anca, Islay, and Pisco shall make direct and detailed monthly returns to the department of finance of all licenses granted by them, in order that said court of accounts may be possessed of proper information thereon.

ARTICLE 8. Each and every master of a vessel upon reaching his place of destination shall deliver to the collector or agent of the customs the permit mentioned in article No. 4. After the discharge of the vessel, said officer shall ascertain the number of bushels or tons brought by the vessel, keep the license in his possession, and furnish the captain with a return voucher in such form as shall be transmitted to him. This voucher the master of the vessel shall be held to produce before the collector of the port, whence he may proceed to take in new cargo, which he shall be inhibited from doing failing this required formality. He shall, on the contrary, be responsible for the payment of the value of the cargo, should he fail, by the exhibition of said return voucher, to prove that he has discharged it at the point for which it was intended.

ARTICLE 9. Every owner or master of a vessel applying for a new license shall, at the time, deliver to the collector of the customs the return voucher mentioned in article 8, under penalty of confiscation of the vessel, and liability on the part of the captain to be tried for the commission of fraud to the detriment of the national property.

ARTICLE 10. In case that the master or owner of a vessel should not take out, within the peremptory period of three months, a new license to stow in cargo, he shall, by the first post starting from the port in which he may be, transmit the return voucher to the collector of the customs who issued the license, which will be deemed sufficient proof of his compliance with the provision of the 8th article. Failing in this, he will be amenable to the penalty prescribed in the 9th article.

ARTICLE 11. The return vouchers shall set forth the names of the master and of the vessel, the numbers of the license and of the bushels or tons taken in, as also the date of departure from the port or cove whence it may start, and that of the arrival at the port of destination.

ARTICLE 12. The collectors, or, in their absence, the higher authorities, that may be in the place where the guano is discharged for consumption in the country, besides carrying out the instructions embodied in article 8, shall transmit monthly to the department of state for the revenue such licenses as they may have collected, noting on each of them the date when the ship to which it may belong came in, the date of the return voucher issued to the captain, and the number of bushels or tons discharged, in order that the high court of accounts may make the necessary collations and ascertain whether said licenses tally with the margin mentioned in the 6th article.

ARTICLE 13. Guano intended for home consumption shall be discharged in those ports or coves only in which it is authorized to be done by the regulations of commerce, or in such others as have been opened by custom for the exclusive importation of guano.

ARTICLE 14. Captains altering the destination of their vessels, taking the cargoes to a point different from that mentioned in the licenses, shall be tried as smugglers, and the vessels and cargoes be confiscated.

ARTICLE 15. Any national or foreign vessel anchoring at or going into the islands and places where guano may be found without the proper license from the authorities whose duty it is to grant such, shall be confiscated.

ARTICLE 16. Any national or foreign vessel that may take guano from any point other than those mentioned in article 3d shall be confiscated, together with the cargo, and the captain thereof tried for smuggling.

ARTICLE 17. Every infraction of the preceding articles shall be tried in the courts of customs, in whatever relates to the confiscation of the vessels and of their cargoes and to the division of their proceeds among the informers and the captors, in compliance with the requirements of the regulations of commerce.

ARTICLE 18. The masters of vessels employed by the state company are bound to the observance of the formalities laid down in the preceding articles, insomuch as they are concerned, and the partners in said company are held to comply with the conditions stipulated in the contract approved on the 19th of February of the present year.

ARTICLE 19. All vessels of the company are prohibited from transshipping the guano which they may have aboard, save in the ports of their destination; and when this is done, the amount which may have been transhipped and that exported shall be vouched for by a certificate from the respective custom-house.

ARTICLE 20. The hunting or killing of birds in the guano islands, the rifling of their nests or catching of their young, is hereby prohibited; and he that may be guilty thereof shall be mulcted in a penalty of one dollar, accruing to the informer, for every bird, fledgeling or egg, which he may take or kill.

ARTICLE 21. The employment of four additional foot-guards in the preventive service of Callao, and of two in that of Pisco, is hereby authorized, in order that the former may alternately visit the ships of

the company that may come up for cargoes, and that the latter take a weekly round of the guano islands. The employment of such guards in the inspectorship of Callao and Pisco shall cease upon the expiration of the contract.

The minister of state for the department of the revenue shall see to a compliance with this decree, and to its execution. Said decree shall be published and registered in an appropriate manner, and report thereof shall be made to the next legislature.

Given at the mansion of the supreme government, in Lima, on the twenty-first of March, eighteen hundred and forty-two.

MANUEL MENENDEZ.
LUCIANO MARIA CANO.

15².

Citizen Manuel Menendez, President of the Council of State, entrusted with the executive power, &c., &c.

Whereas, in pursuance of the contract made with Quiroz, Allier & Co., Puimirol, Poumaroux & Co., and Gibbs, Crawley & Co., on the 19th of February, for the foreign exportation of guano from the islands of the republic, no one is allowed to export, except through the channel of said company; whereas the decrees of the 12th and 21st of March last forbid all vessels, national or foreign, proceeding to the islands or localities where guano is found, without the proper permits from the authorities appointed to grant them; and whereas, lastly, the nation has full power to prohibit the extraction of guano, through means distinct from those that have been mentioned—I decree:

ARTICLE 1. Guano, whether in foreign or national vessels, shall not be extracted, for foreign trade, in any quantity, or from any part of the territory of the republic, except from the island north of the Chincha islands, and this, exclusively, by the company of the state, together with Quiroz and the other members of said company.

ARTICLE 2. Every person directly or indirectly contributing to or co-operating in the extraction of guano for foreign exportation from any place other than that pointed out, shall be compelled to pay, in cash, sixty dollars per ton on the admeasurement of the vessel that may so export guano. Failing to do so, property of his, sufficient to cover the whole amount, shall be seized and sold, the proceeds whereof shall be awarded to the informers, in conformity with the laws which govern custom-house seizures; and proceedings in these cases shall be conducted by the courts of customs.

ARTICLE 3. Vessels engaged in smuggling or infringing the 15th and 16th articles of the decree of the 21st of March last shall be confiscated, and the masters thereof brought to trial as smugglers.

ARTICLE 4. No authority of the republic can, in any case, grant license for the exportation of guano abroad; nor shall the custom-

houses, except the custom-house of Callao, grant clearances for any vessels, except those of the company in partnership with the state.

The secretary of the treasury is instructed to issue all necessary orders to secure the execution and fulfilment of this decree. Given in the mansion of the supreme government, Lima, May 10, 1842.

MANUEL MERENDEZ.

LUCIANO MARIA CANO.

No 16.

To Mr. Triado's note of 23d October.

[Translation.]

Señor Minister of State for the Department of the Treasury :

SEÑOR MINISTER: In compliance with the instructions which were given to me by the supreme government, under date of the 24th of July of the present year, to make a reconnaissance and general survey of the Peruvian guano islands, situated to the north of the port of Callao, I very respectfully submit to you the following report, computations, and plans, which form the result of my examination. In describing the third division of the guano islands of Peru—"the northern deposits, or guano islands of the north"—it would be superfluous in me to offer any remarks in regard to the general history, geological features, &c., of this interesting section; for, as they are almost the same as those of the south and the centre, so fully and scientifically described in the "Memoir" written concerning them, I ought to proceed at once to give a particular description of the various localities visited by me, including all the islands of any importance, and making some remarks relative to the main land situated between Callao and Paita. At two or three of the smallest islands which were mentioned in your orders, a landing (at all times difficult) could not be effected, on account of the roughness of the sea, and the violent gales which prevail in the spring season; nevertheless, it is believed that but few deposits of any considerable extent were left unvisited. Their area was accurately measured, and the depth ascertained, as far as time and opportunity permitted. The correctness of my general estimate depended entirely on the approximate accuracy of this third element, and as none of the guano islands of the north have been labored upon or opened, the depth could only be ascertained by perforation or boring; and this was done on numerous occasions. Nevertheless, my calculations are only approximate, because the banks upon which the deposits of guano are found have generally a surface so irregular and unequal that numerous and frequent perforations had to be made in order to afford positive data, and this required more time than I believed I had the right to devote. The absence of apertures also makes it more difficult to describe the peculiar characteristics of these deposits, in regard to difference of color, solidity, stratification, quantity of ammonia, &c.

At the same time, specimens have been taken from all the extensive deposits sufficient to determine the quality of the guano of the different localities.

Lobos de Tierra.

These islands are situated in latitude $5^{\circ} 6' 30''$ south, and longitude $80^{\circ} 48'$ west, or about 35 miles southwest from Lambayeque. They consist of a principal island and a few smaller islets and rocks, disconnected from each other on the northern and southern sides. The greatest extent from north to south is a distance of from two to three leagues, with a relative breadth of one to one and a half mile. The natural surface is very irregular, being formed of conical peaks of igneous rocks, principally of variegated granite, rising abruptly from the surface, separated by rugged fissures and ravines. There is good anchorage in various parts of islands, in about seven to ten fathoms of water, the water deepening very gradually from the bay and numerous coves, where boats may run upon a sandy shore, thus affording great facilities for taking in the guano, which is found distributed in deposits of various depths over almost the whole extent of the island. The greater and more important deposits are found in the spots frequented by birds for the purpose of building their nests and hatching their young, and on the higher promontories and small detached islands. This would seem to be directly the opposite of what has been described as being the case with the guano islands of the south. I have generally found those spots in the south and on the highest points of the islands, beyond all doubt, the most open and exposed to the prevailing winds. The numerous small deposits scattered over the island, in the gullies, and in the low and level places, are probably, in many instances, the result of constant accumulations, caused by the wind. As the guano is generally more or less mixed with sand, the depth seldom exceeds four or six feet; but the extent of the layers is sufficient to entitle them to consideration. One of the largest of the kind, lying about two miles from the most northerly point, and extending almost across the narrowest part of the island, is 300 yards in length by 200 in width. There are, over the island, some eight or ten spots of the same kind and of equal extent. The guano, although variable in color and appearance, generally of a red or dark ashy color, is probably of an inferior quality, being a mixture of the excrements of birds and seals, and frequently containing much sand. Specimen No. 2 is taken from one of those spots, and in it the presence of ammonia is less perceptible by the smell than is the case with the greater part of those deposits. Near the southeast point of the main island, and connected with it by a chain of rocks, some 400 yards in extent, is the small island represented in the plan No. 1, and called by the fishermen who frequent these islands,

Isla Colorado.

This island is 336 yards in length and 180 in breadth in the widest part of the irregular figure described in the plan; its greatest height

is from 25 to 30 yards above the level of the sea. The rock is entirely covered by guano. In the centre or highest point, the greatest depth obtained by excavation is that of 39 feet. As its name would imply, the surface presents a reddish appearance, but beneath that the color is most generally of a grey or ashy variety, smelling strongly of ammonia. Upon digging through the deepest part the last three or four yards were found to be somewhat moist and of a much darker red hue; it is neither very hard nor compact, and, so far as an examination has been practicable, it presents very little of a stratified appearance. The island is now the resort of innumerable birds of the species of those that either brood on the surface or undermine it to build their nests. A few seals were also met with; remains of like animals were frequently noticed, mixed up with the skeletons and plumage of the birds; guano is undoubtedly an admixture of these two elements, but the most part of it seems to be derived from the birds. Both specimens marked No. 1 were taken from that island. At the extremity on the north there is a small cove, with a sandy beach, some 20 yards in extent, where boats can land in safety. At this point the guano reaches the margin and the boats may load immediately from the beach.

Near this point it is evident that a small quantity has been recently extracted. From the appearances of the excavation, the quantity taken out, it is inferred, must have ranged from 500 to 800 tons. The area of this island is 3,151 square yards, and the results of calculation give 236,300 cubic yards of guano.

At the point of the main island, some 400 yards distant from what is called "Colorada Point," there is a guano field, covering an area of 330 yards in length, or an average breadth of seventy yards. Its depth is quite unequal, being greater in two or three small barren ravines. The rock is occasionally visible in the intervening ridges, but in no portion does it exceed a few feet. The guano appears to be of the same kind as that found in the island already described; although occasionally fine, it bears a little admixture of sand. Near this point is a sand beach, and guano may be taken in with the greatest facility; area, in square yards, 23,100, which, allowing two yards for the depth, gives 46,200 cubic yards.

Bermeja (Red) Island.

West of the main island, and some two miles south of the most northerly point, lies the islet called Bermeja. It is something like 300 yards distant, and, as in the case of the "Colorada," it connects with the large island by a rocky reef, partly covered during flood-tide. Its greatest extent measures 495, and its main breadth 220, yards; but, as will appear from the accompanying plan No. 2, the breadth is generally much less. The highest and most central part is from thirty to thirty-five yards above the level of the sea. It is covered with guano, except in that portion which lies more to the east and is narrowest, having its greatest depth in the centre, thus giving to the island a very equal and uniform oval shape, whatever may be the natural superficies of the portion beneath the rocks. Th

guano is of a dark ashy grey, with a very powerful ammoniac smell, dry and soft, and susceptible of easy excavation with a scoop. The whole superficies is coated with a hard layer from one to two inches thick, the probable result of both the natural moisture of the atmosphere and of that produced by the return of the birds from the water. The birds belonging to that variety which most frequents the island, are the *guanacs* and the *potoyuncos*, that build their nests beneath the surface. No seals were seen here. There is an excellent anchorage for ships towards the north of the island, in eight or ten fathoms water, well protected against the reigning winds, but, although the water be smooth, the landing for boats is not good on account of the low, jagged rocks, which completely girdle the island. In spite of their slight elevation, however, a gangway may be rigged over them for a distance of a few yards, and at little cost, so as to make the loading easy and safe. Specimen No. 3 is taken from this locality. The greatest depth of excavation in the centre was thirty-six feet, giving the area of the island 52,926 yards; the quantity of guano contained is calculated at 317,556 cubic yards.

Point "Colorado."

This is a high butting promontory, forming the most westerly point of the island, and situated about halfway between the extreme north and south. The surface is very irregular, the highest points being from twenty to twenty-five yards above the level of the sea. The guano is spread over an extensive surface; it is, however, but a few feet in depth. Differing from the other large deposits which have been described, that surface, to the eye of an observer at a distance, presents a whitish appearance. It is at present the resort of a greater number of birds than is to be found in any other portion of the island. On the whole, it bears evidences of being a deposit of a more recent date than that of many of the other islands, and there is no doubt that it now receives no slight annual addition to its stock. The natural superficies of the locality is favorable to its preservation, the general direction of the winds being such that the guano is deposited in the lowest and most protected spots. The places where the birds build their nests being generally on the highest and least sheltered points, the guano is very hard and compact, owing to the constant moisture which is kept up, and it consequently bears the appearance of layers or strata generally adapted to the natural surface or the dip of the rocks. The guano of this deposit is of an even grey color, and is impregnated with a strong smell of ammonia; it is considered to be of the best quality. This locality is figured in plan No. 3. The colored numbers refer to the depth in feet found in that locality, from which specimen No. 4 was procured. North of the point there is a good bottom, about a cable's length distant from the shore in seven or eight fathoms of water. There are also two or three small creeks where the launches may load with the utmost facility. The whole extent of this guano island covers 113,940 square yards, and calculation gives, as a result, 224,760 cubic feet.

"Felis Gonzales."

About a mile southeast from the last described locality is found the islet of that name, separated by a distance of thirty yards only from the main island. Its dimensions in length and breadth are ninety by seventy yards, elevated some fifteen yards above the level of the sea. The guano is of the same kind and appearance as are those described in the Bermeja island, ranging through a depth of from four to five yards. There is good bottom near the lower portion on the north of easy access for loading boats. The area of the island is 6,550 yards, and the guano is estimated at 26,200 cubic yards. Opposite the point of the main island is a small deposit of the same kind, calculated to contain 14,700 cubic yards. The measurements of these deposits are exhibited in plan No. 4. The main island is not put down with the accuracy of a survey; it appears as a mere sketch, added for the purpose of identifying the relative positions of the deposits described.

Recapitulation of the number of cubic yards of guano contained in the principal deposits of the islands *Lobos de Tierra*:

Colorada island	236,300	cubic yards.
Point Colorada	46,200	"
Island Centre	90,000	"
Bermeja island	317,556	"
Point Corcobeda	224,760	"
Felis Gonzales.....	26,200	"
Point Opuesta	14,700	"
	<hr/>	
	955,716	"
	<hr/>	

Lobos de Tierra.

These islands, situated in latitude $70^{\circ} 3'$ south, and longitude $80^{\circ} 41'$ west, consist of two principal islands almost equal in size. They extend in a general northeast and southwest direction, and are separated one from the other by a narrow strait merely of some thirty or forty yards in width. Towards both the eastern and the western borders lie smaller islands and scattered rocks. Their natural surface is even more irregular than that of the *Lobos de Tierra*. The rocks rise up more abruptly from the sea, and generally so to a greater height. The formation principally consists of mica slate, lying in very tortuous strata, and generally running at an inclination almost perpendicular to the horizon. Some portions are of a granite formation, abounding also with feldspar. Almost the whole of the southeast portion of the southern island, with the exception of the naked points of rocks, is an immense field of guano, but in no portion of it do we meet with any considerable depth. It is highly irregular in its configuration. Having, however, made repeated measurements of its longitude, intersected by perpendiculars in the salient angles, as well as resorting to triangulations, it is deemed that the accompanying plan will exhibit a generally correct chart of this portion of the

island. Throughout its whole extent excavations were made to ascertain the depth of the layer, which generally averaged from four to six and even eight feet. In one part only of the coast did we succeed in reaching a depth of sixteen feet. So uneven, however, is the surface, that calculation can reach an approximative result only as to the total quantity contained. This, indeed, is the only method which may be pursued with any degree of satisfaction.

The outer appearance of the deposit is one of a dirty white. Still the prevailing color of the guano is a dark gray or a red tint, with the usual smell of ammonia. It seems to be mostly composed of the excrements of birds with some admixture of that of seals; remains of which are found in great quantities. In some spots a slight mixture of sand was observed, the natural effect of the winds, for it is put beyond doubt that a great quantity of guano has been drifted to its present position from the highest points of the island.

In the southeastern portion of this island, at the distance of a mile, as is represented in the same plan, is found another small guano field. In general it looks very much in kind like that of the other field, but being on a higher point of the island it is purer, of a somewhat lighter hue and of the best quality. Some small quantity of it has evidently been taken from this island; but as the cavity has been filled up again by the action of the winds, it is impossible to say how much has been extracted; probably not exceeding one or two ship-loads. Numerous are the birds of this island, generally those of the species called *piqueros*.

Lying at a short distance to the northeast of the principal island is an islet which appears covered with guano; our inability to land prevented a visit to the deposits. They probably in a greater part proceed from the seals, for a great number of them were descried over its extent. There is a small cove lying favorably for loading, as it is almost in the centre of the principle field of guano, but somewhat exposed to the action of the winds. Still it is surmised that little difficulty would be encountered for the greater part of the seasons. It is certain that the most of the guano has to be transported a distance of from 200 to 300 yards; this may be most conveniently done in sacks, from which it can immediately be deposited into the boats. There are good bottom and numerous coves or creeks in the island where boats may land in safety in any kind of weather. These, however, are somewhat removed from the *situs* of the guano. The two specimens No. 5 were procured from those deposits. The whole extent includes an area of 296,380 square yards, and the result of calculation gives 531,436 cubic yards.

E. C. CARTER.

LIMA, October 11, 1847.

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A true copy of the report in which are mentioned the islands Lobos de Tierra and Lobos de Fuera.

FELIPE BARRIGA ALVAREZ, *Chief Clerk*.

Rep. Com. 397—11

No. 17a.

LIMA, October 20, 1852.

Availing myself of your present residence in this capitol, I have the honor of applying to you with the view that, from the special knowledge derived from your former and official residence in Paita, you may be pleased to inform me of the formalities and requirements to be observed by vessels going to the islands of Lobos de Fuera and Lobos de Tierra to catch seals, or for any other purpose.

I would also ask to be favored by such information as you may possess as to licenses given for said islands to national or foreign vessels, as to circumstances connected with said licenses, and finally, as to whether foreign vessels, especially American bottoms, have gone to the Lobos islands with or without license, since the prohibitory regulations of 1833.

I shall be highly grateful for the favor which you may be pleased to confer, by supplying the information desired in the premises.

Your affectionate servant and friend,

JOSÉ MANUEL TIRADO.

Mr. ALEXANDER RUDEN,

Consul for the United States at Paita.

A true copy :

PHILIPPE BARRIGA ALVAREZ, *Chief Clerk.*

No. 17b.

LIMA, October 21, 1852.

SIR: I have the honor to acknowledge the receipt of your highly valued communication of the 20th instant, and I will cheerfully, to the best of my power, answer its contents. This I shall, however, be compelled to do wholly from memory, as I have here no papers or documents to which I can refer.

Previous to the year 1833, I purchased in Paita some seal skins which had been procured at the Lobos de Afuera islands, by boats sailing out of Paita for that object. Afterwards, and previous also to the year 1833, through the instrumentality of an agent in Lambayaque, I procured another lot of said skins, obtained in those islands by boats or crafts out of the port of San José; indeed, an agent in Lambayaque had a contract with me to supply me with those skins, and I then understood that they were taken by natives of the country that went from the port of San José for the express purpose of catching seals on said islands. I have, however, no knowledge of "the formalities and requirements" necessary, at the time mentioned, to authorize vessels or proceed to the islands for the purpose of taking seals. Finding:

myself afterwards in Païta, in the year 1834, and wishing to comply with the request of a friend of mine in Baltimore, who had desired that a lot of seal skins should be consigned to him, meeting with none in the market of Païta, I determined to send two whale-boats to "Lobos de Afuera islands" for the express purpose of taking seals. I discovered that, in order to do so, it was necessary to procure a written permit from the authorities at the port of Païta. The expedition I accordingly fitted out, under the command of a citizen of Peru, whilst the majority of the crews of both crafts were also citizens of Peru. These conditions, as I then learned, were necessary in order to comply with a law of 1833, I believe, enacted by Peru, and forbidding the citizens or subjects of a foreign country engaging in the seal fishery in the Lobos islands; the use of the Peruvian flag in the boats was also a requirement.

In 1837, I received the appointment of consul of the United States for the port of Païta, and, with a few short intervals, I have since that time resided in said port. In my intercourse with the masters of vessels of my country I have ever held it to be my duty to warn them to abstain touching at points prohibited by the laws of Peru, naturally including among them the "Lobos de Tierra" and "Lobos de Afuera" islands, as I had received in my consulate no intimation to the contrary from any of the authorities of the United States.

You will infer from these circumstances that I can have no knowledge of licenses issued in behalf of "Anglo-American vessels;" they could not well have requested or claimed what was prohibited by a special law of Peru. I do know that, in the port of Païta, it was customary for the boats of the country—that is, for boats of lighter burden, under the Peruvian flag, to go in ballast to said islands for the purpose of fishing, and that they invariably applied for permission to the competent authorities. Until recently, the said boats resorted to these islands with the view of gathering birds' eggs, which were a common article on sale in the market of Païta. Now, I have satisfactory reasons to know that the boats engaged in this trade applied to the authorities of the port of Païta for permission to make the trips. These have been given up since the year 1842; and I believe, for my part, that it was in consequence of the last prohibition contained in a law at the time enacted by Peru.

I have no knowledge, from 1833, of any "Anglo-American" vessels going to the "Lobos de Tierra" or "Lobos de Afuera" islands; and I think I do not mistake in assuring you that, in my opinion, no "Anglo-American" sealing vessel has touched at those points since the period mentioned above. Should such hasty data as I have been able to furnish to you prove of any service, it will peculiarly gratify your servant and friend,

ALEXR. RUDEN, Jr.

Mr. JOSÉ MANUEL TIRADO,
Minister of Foreign Relations.

A true copy.

FELIPE BARRIGA ALVAREZ,
Chief Clerk.

LEGATION OF THE UNITED STATES,
Lima, October 25, 1852.

The undersigned, chargé d'affaires of the United States of America, has the honor to acknowledge the receipt of the note which his excellency D. José Manuel Tirado, minister of foreign affairs, addressed to him on the 23d instant.

The observations made by his excellency, in reply to the note addressed by the Secretary of State to the Peruvian chargé d'affaires at Washington, on the 21st of August last, and the arguments elucidating the title of the Peruvian nation to the islands of Lobos, appear to be well founded, and they are confirmed by the documents adduced in support of that right.

The undersigned, therefore, after a scrupulous and careful investigation of all the points connected with the subject—as well those mentioned in his excellency's note as those which have come under his own observation—feels himself constrained to admit that, in his opinion, the right of the republic of Peru to the sovereignty and possession of the islands of Lobos de Afuera and de Tierra is perfect and unquestionable.

The undersigned profits by this occasion to renew to his excellency the minister of foreign affairs the assurance of his most distinguished consideration.

J. RANDOLPH CLAY.

Mr. Clay to Mr. Webster.

[No. 116.]

LEGATION OF THE UNITED STATES,
Lima, November 11, 1852.

SIR: I have the honor to enclose to you a copy of the "proclamation" issued by Commodore Macaulay, previously to sailing from the islands of Lobos de Afuera, on his return to the United States.

When he left Callao on the 16th ultimo, I was convinced that he intended to remain at the islands until relieved by another vessel of the Pacific squadron. He will doubtless have explained to the proper department his reasons for not doing so.

As I think that there is still some danger of a collision between the vessels belonging to citizens of the United States and the Peruvian forces at those islands, I addressed a letter on the 2d instant to Captain Dulaney at Valparaiso, and requested him to go there in the St. Lawrence as soon as convenient, and I trust that he may arrive in time to prevent any difficulties from occurring. I also forwarded to him a despatch from the Navy Department, received on the 31st ultimo, addressed to Commodore Macauley.

The Golden Era arrived at Callao a few days ago, and has been chartered by the agents of the Peruvian government, to take a cargo

of guano from the Chinchá islands, at the rate of sixteen dollars per ton. She is one of the vessels mentioned in the list transmitted with despatch No. 30 from the department.

I am, sir, with the highest respect, your obedient servant,
J. RANDOLPH CLAY.

Hon. DANIEL WEBSTER,
Secretary of State.

A PROCLAMATION.

To all whom it may concern.

Whereas it appears that a number of vessels, said to belong to citizens of the United States, have been chartered to proceed to the islands of Lobos for the purpose of taking in cargoes of guano, I have to inform all such that I have been instructed by my government at Washington to abstain from protecting any vessels of the United States which may visit these islands for purposes forbidden by the decrees of the Peruvian government; and I am forbid from aiding or abetting any citizens of the United States who may forcibly resist the execution of the laws of Peru.

Given under my hand on board the United States frigate *Raritan* on the 18th day of October, 1852.

C. S. MACAULEY,
Commander-in-chief U. S. Naval forces in the Pacific Ocean.

By command of the commander-in-chief.

F. B. McKEAN,
Secretary.

LEGATION OF THE UNITED STATES,
Lima, November 2, 1852.

SIR: I have the honor to enclose to you a despatch addressed to Commodore C. S. Macauley which was received on the 31st ultimo from the Department of State at Washington. As Commodore Macauley has, very unexpectedly to me, left the Lobos de Afuera islands for the United States, I hasten to transmit the despatch referred to, in order that you may be made acquainted with its contents as early as possible, because the presence of a vessel-of-war of the United States is absolutely required at the Lobos islands to prevent collision between the vessels belonging to citizens of the United States, which have been chartered by certain parties in New York and other places to take guano from them, and the Peruvian authorities and troops stationed there.

The government of the United States, I feel assured, expected that

Commodore Macauley would have remained at the islands of Lobos until the "Raritan" was relieved by another vessel of the Pacific squadron, as it is absolutely necessary that one of our ships of war should be stationed there until all danger of collision be passed. As he has sailed for home, it becomes my duty respectfully to suggest to you the propriety of proceeding as soon as may be to the Lobos de Afuera islands in the St. Lawrence, for the purpose above mentioned, as I understand that there is no other vessel of the squadron which could arrive at those islands in time to render the service required under present circumstances.

I also enclose an extract of a letter addressed by me to Commodore Macauley on the 13th ultimo, during his stay at Callao.

I am, sir, with the highest respect, your obedient servant,

J. RANDOLPH CLAY.

Commodore BLADEN DULANY,

U. S. N., Commanding-in-chief the

U. S. naval forces, Pacific ocean.

Mr. Clay to Mr. Webster.

[No. 117.]

LEGATION OF THE UNITED STATES,

Lima, November 11, 1852.

SIR: I received on the 31st ultimo despatches Nos. 31 and 32 from the department, dated the 21st of September and 1st of October last, and also the private letters from the Acting Secretary of State. In conformity with the request contained in these last, I have not communicated the contents of No. 32 to the Peruvian government, notwithstanding that it would, I think, have been politic to make known the change that had taken place in the views of the government with regard to the Lobos islands.

The minister of foreign affairs is already informed of my opinion in the matter, and it would give me pleasure to announce that it has been confirmed by the President of the United States. As it is, I must await the arrival of further despatches from Washington.

Although I was convinced that this government would not consent to the proposal contained in despatch No. 32, to allow the vessels which had sailed from the United States and other places for the Lobos islands between the 5th of June and 24th of August last to load with guano at them on their own account, I did not fail to bring the subject to the notice of the Peruvian government. I represented to the minister of foreign affairs that many of the vessels referred to had been despatched from the United States under the idea that they were perfectly free to take guano from the Lobos islands, that the owners had expended large sums of money in fitting them out, and that unless they were permitted to load for the owners' account it was supposed that the losses sustained by them would be very heavy. That the government of the United States felt itself bound to avert, as far as

lay in its power, such consequences, and that I was accordingly instructed earnestly to press upon the Peruvian government to allow the vessels to load in that manner. That the freight they would earn under charters from the agents for the sale of the guano would not, it was stated, reimburse the owners; and that, therefore, I proposed that they should be permitted to carry out their voyages as originally intended. I told him that unless this were agreed to I feared that difficulties might occur, as, naturally, those engaged in the business would be greatly exasperated by their losses.

The minister of foreign affairs replied to me, that it was impossible for the Peruvian government to agree that the vessels in question should load with guano for account of their owners, not only because of the loss which the republic would suffer by the quantity taken away—which would probably amount to twenty thousand tons—but because such permission would be a direct violation of its contracts with different commercial houses for the sale of the guano in the United States, England, and other countries. Those contracts were regular engagements entered into for the consignment and sale of the article abroad, upon the faith of which the mercantile firms had advanced large sums of money, and in view of which the government had been enabled to make an arrangement with its foreign creditors. Therefore, if the Peruvian government were even disposed to agree to the proposal, it could not do so without breaking through its obligations. This would, in fact, be injuring other parties whilst endeavoring to avert the losses said to be impending over the citizens of the United States. Besides this, it was evident that, as the property in the Lobos and other islands on the coast was undoubtedly vested in the Peruvian nation, it was not bound to indemnify the losses of foreign citizens who had entered into commercial expeditions, the carrying out of which would be an open violation of its fiscal regulations and laws. That the citizens of every nation were bound to respect the rights and laws of a friendly State, and if they embarked in any enterprise which would involve a violation of either—whether they did so of their own accord, or in consequence of an assurance that their proceedings would be protected, given by their government under a mistaken view of the rights referred to—they certainly had not the least ground to claim any indemnification from such State for any loss that they might suffer. Otherwise, the persons embarking in such enterprises would be taking advantage of their own wrong.

Moreover, if the Peruvian government were to permit the vessels to take guano from the Lobos islands for their own account, there would be nothing to guarantee that the citizens of other nations would not enter into similar enterprises, in the hope of receiving similar indemnification.

The minister added, that his government believed it acted most liberally towards the citizens of the United States, by consenting to charter, for its own account, the vessels which had left the United States for the Lobos islands; and as they would receive a high rate of freight, he trusted they would not be losers to any great amount.

Although I earnestly endeavored to obtain from the Peruvian government the permission that the vessels might load with guano at.

the Lobos islands for account of their owners, I felt convinced that it would not be granted, and that the most that could be obtained was, to give charters to them for account of Peru. Indeed, as the title to those islands was clearly in the Peruvian government, I think it has acted most liberally in agreeing to those terms; for, being certain of its right of property in the Lobos islands, there was no call upon it to show much consideration to those who, by fitting out the vessels to take guano from them, were, in fact, preparing to commit a trespass.

After all, the freight agreed to be given by the Peruvian government to the vessels which sailed from the United States, between the 5th of June and the 24th of August, and which will be, I think, at the rate of at least sixteen dollars per ton, will, in my opinion, "indemnify their owners." The expense of fitting out vessels for the guano trade is not more considerable than for other business, and judging from my own observation, I should say it is less, as there is no dunnage, &c., required, and the guano is thrown loosely into the hold. If this were not the case, vessels could not be chartered at twelve dollars a ton, as is frequently the case.

It is also stated in despatch No. 32, that it was reported "that some persons had embarked in the business in consequence of the letter from the department, in which the opinion is expressed that United States vessels had a right to take guano at the Lobos islands, and that they would be protected in doing so, and that some have made contracts for the delivery of the article at prices much below the market value; and, consequently, that the government of the United States "feels it incumbent on it [to] do all in its power to prevent them from sustaining loss." Now, it is by no means apparent that those who originally addressed the department upon the subject were not fully aware that the Lobos islands belonged to Peru. Every one who has been in this part of the Pacific knows that fact, because it is a matter of notoriety. I believe that Captain Jewett knew it perfectly well when he addressed the letter to the Secretary of State, on the 5th of June last, as he states that he had just returned from the Pacific, and refers to the islands as being near the coast of South America; thus leaving it to be inferred that they were off some unoccupied coast—possibly Patagonia! If he and others had not known the rights of Peru, they would not have thought it necessary to send out arms and ammunition to carry out their speculations *by force*. In case of success, they could easily have undersold the Peruvian government, for one can very well afford to sell cheap what does not belong to him.

Entertaining the conviction that the persons who have sent vessels from the United States and other places to take guano from the Lobos islands were, with very few exceptions, perfectly aware that they were engaging in the business in violation of the rights of Peru, (a conviction in which all the citizens of the United States familiar with the Pacific ocean share,) I think they are entitled to very little consideration on the part of their own government, and certainly to none on the part of Peru. There are, however, no doubt some who really supposed that the islands were unoccupied, and open to foreign commerce; but these, as they probably expended at most the sum

necessary to place their vessels in a condition to go out in ballasts, and take a cargo of guano, will be amply compensated by their ships earning a return freight of at least sixteen dollars the ton. The captains of the "Manlius" and the "Golden Era" appear to have thought so, as they have accepted charters at that rate.

I have the honor to be, sir, your obedient servant,

J. RANDOLPH CLAY.

Hon. DANIEL WEBSTER,
Secretary of State.

Mr. Everett to Mr. J. J. de Osma.

DEPARTMENT OF STATE,
Washington, November 16, 1852.

The undersigned, Secretary of State of the United States, has been directed by the President to address the following communication to his excellency Mr. Joaquin J. de Osma, envoy extraordinary and minister plenipotentiary of Peru :

Mr. de Osma is aware that on the 21st of August last, in a communication of the late Secretary of State to Mr. J. J. de Osma, chargé d'affaires of Peru, it was stated that the government of the United States was prepared to give due consideration to all facts tending to show possession or occupancy of the Lobos islands by Peru. At the same time the Peruvian chargé d'affaires was informed that the President thought it most advisable, under all the circumstances of the case, that full instructions on the subject should be sent to the chargé d'affaires of the United States at Lima, and that proper orders should be given to the naval force of the United States in that quarter to prevent collision until further examination of the subject.

In pursuance of this intimation, the order of the 24th of August was issued to the commander of the "Raritan," revoking that of the 5th of June, and instructing him that vessels of the United States were not to be protected in any attempt to take guano from the Lobos islands by force.

On the 30th of August instructions were despatched to Mr. Clay, chargé d'affaires of the United States at Lima, directing him to communicate to this department all the information on the subject possessed or which could be procured by him; and a special messenger was sent to Peru to aid in the fulfilment of these directions.

Before these despatches reached Mr. Clay he had in part accomplished their object, by the transmission of documents and statements throwing important light upon the history of the islands; and at different times since valuable information upon the subject has been received from Mr. Clay.

Shortly after his arrival near this government as envoy extraordinary and minister plenipotentiary of Peru, Mr. Joaquin J. de Osma was apprized by the late acting Secretary of State that the information thus received had been duly weighed by the President, and had dis-

posed him to think favorably of the title of Peru to the sovereignty of the Lobos islands.

On the 7th of October last Mr. de Osma addressed a note to the Secretary of State, replying at length and with great ability to Mr. Webster's letter of the 21st of August. The receipt of this note was duly acknowledged by the Acting Secretary of State, who promised that it should receive mature consideration; and the Acting Secretary of State at the same time invited the favorable attention of the government of Peru to the case of the United States vessels which had been chartered for the Lobos islands under the expectation that they would be protected by this government. This subject has since been discussed both in writing and in personal interviews between Mr. de Osma and this department.

Further despatches have been received within a few days from Mr. Clay in which the title of Peru is discussed at length. Mr. Clay also transmits communications of great importance from his excellency Mr. Tirado, the Peruvian minister for foreign affairs. At the close of this note Mr. Tirado informs Mr. Clay that the Peruvian government will, on its own account, freight the ships of the United States which had been chartered for the Lobos islands, of which public notice has been given by Mr. Clay to the American vessels in the Pacific.

The undersigned has now the pleasure further to say that the President, having given to the arguments and facts set forth in the note of Mr. de Osma of the 7th of October the attention to which they are so justly entitled, and having weighed with care the information contained in the despatches of the chargé d'affaires of the United States at Lima and in the notes of his excellency the Peruvian minister of foreign affairs accompanying them, has dismissed all doubt from his mind as to the title of Peru to the Lobos islands. He perceives no longer any reason to question her rightful sovereignty over those islands, and he makes this avowal with the greater readiness in consequence of the unintentional injustice done to Peru under a transient want of information as to the facts of the case.

The undersigned has accordingly been directed by the President to withdraw, unreservedly, all the objections taken by the late Secretary of State, in his communications with Mr. J. J. de Osma, to the sovereignty of Peru over the Lobos islands, and the other guano islands on the coast of Peru, and in her possession; and to assure Mr. de Osma, for the information of his government, that no protection or countenance will be afforded by the United States to any proceedings on the part of her citizens inconsistent with this acknowledgment.

The undersigned requests Mr. de Osma to accept the assurance of his high consideration.

EDWARD EVERETT.

Señor DON J. J. DE OSMA, &c., &c., &c.

[Translation.]

*Mr. Osma to Mr. Everett.*PERUVIAN LEGATION,
Washington, November 17, 1852.

The undersigned, envoy extraordinary and minister plenipotentiary of the republic of Peru, has received the note which his excellency Mr. Everett, Secretary of State of the United States, was pleased to address him yesterday, informing him that having submitted to the President the communication which the undersigned had the honor of addressing to the Department of State on the 7th of October last, in relation to the rights of Peru to the Lobos islands, together with the documents which the chargé d'affaires of the United States at Lima had forwarded, the President, after examining the whole most attentively, had thought that the doubts which he might have entertained in regard to the sovereignty of Peru over said islands ought to disappear, and that he has ordered his excellency the Secretary of State to recognize the rights of that republic in the name of his government, assuring the undersigned that the United States will not, under any circumstances, protect American citizens or American vessels that may repair to the islands aforesaid without a permit from the Peruvian government, or that may refuse to submit to the regulations in force in that territory.

The undersigned cannot avoid expressing to his excellency Mr. Everett the satisfaction with which he has learned of the resolution he had the kindness to communicate to him, which, in his opinion, is an evidence of the impartiality of his government in the examination of this question, while it serves to justify the confidence with which the Peruvian government had appealed to the enlightened understanding of the former, and to its respect for the rights of a friendly state.

Under these circumstances, the undersigned would fail, he fears, in responding as he ought to do to the sentiments expressed in the note of his excellency Mr. Everett, if he were not to show him, in his turn, the deference with which he receives his special recommendation in behalf of those vessels that have been despatched to the Lobos islands by citizens of the United States with the understanding that they were at liberty to ship guano there freely, and he has the honor of promising to Mr. Everett, in the name of his government, 1. That American vessels which sailed from the ports of the United States from and between the 5th of June, up to the 25th of August last, fitted out for shipping guano at said islands, (of which the undersigned encloses as correct a list as could have been drawn up from the data that have been collected,) shall be chartered on account of the Peruvian government for the purpose of loading at the islands of Chincha, at the rate of twenty hard dollars per ton, the owners or shippers endorsing the contracts they may have entered into to the consignees or agents of Peru in the United States. 2. The instruments or utensils used in extracting guano, which the aforesaid vessels may have carried over shall also be taken on account of the

government, security being given *at Callao* for their just value to the masters of the vessels by the same agents of the government for the exportation of guano, previous to the delivery of the articles. 3. Those vessels that have taken freight in the ports of the Pacific with the same object, in consequence of the orders that were sent by the United States before the 25th of August, and which could not have been revoked afterwards, shall likewise be chartered on account of the Peruvian government at the same rate of twenty dollars per ton, provided that the contract for freighting be presented and endorsed to the aforesaid agents of Peru in the United States before the 1st of next January.

The undersigned hopes that these measures will prove satisfactory to his excellency Mr. Everett, in the interest he has shown in behalf of those persons who have despatched vessels to the Lobos islands, and availing himself of this opportunity to evince his gratitude for the friendly disposition he has met with both on the part of the President and that of Mr. Everett, to terminate this matter in a manner honorable and worthy of the relations which bind Peru to the United States, he renews to his excellency the assurances of his high consideration and regard, with which he remains his obedient servant,

JOAN. Y. DE OSMA.

The Most Excellent EDWARD EVERETT,
Secretary of State, &c , &c., &c.

Mr. Everett to Mr. Clay.

[No. 33.]

DEPARTMENT OF STATE,
Washington, November 18, 1852.

SIR: Your despatches, numbered from 110 to 114, inclusive, and forwarded by Lieutenant Gillis and Mr. Miles, have, with their enclosures, been duly received and submitted to the President. The short time which remains before the sailing of the steamer of the 20th, and the importance of acquainting you by this opportunity of the present state of affairs, make it necessary for me to write to you on this occasion very briefly.

It has not been possible to read with care the whole of your elaborate and valuable despatch of the 25th of October with all its appendages; but sufficient opportunity has been had to form an opinion of its great importance as an exposition of the title of Peru to the sovereignty of the Lobos islands. As far as I have examined it, it furnishes ample confirmation to those results to which the question had been brought by your former communications, and information derived from other sources. On this subject I may have occasion hereafter to address you.

I am directed, at present, to express the President's satisfaction with your conduct during the somewhat embarrassing scenes of the last summer and autumn. He recognizes with pleasure the discretion

and good judgment which have marked your correspondence with the Peruvian minister, and your prompt exertions to prevent collision between vessels from the United States and the government force at the Lobos.

The President is also entirely satisfied with the diligence and ability of your researches into the title of Peru to the sovereignty of those islands.

The evidence collected by you has been of material use in enabling him to make up his mind on this subject.

You will learn with satisfaction that a definitive arrangement has been concluded between M. de Osma and this department of all the matters in controversy.

Copies are herewith transmitted to you of a note addressed by me on the 16th instant to M. de Osma, together with a copy of a note from him of the following day, from which the terms of this arrangement will appear. The basis, of course, is that which M. de Tirado proposed in his note to you of the 23d of October, on the strength of which your notification of the 1st October to the American vessels in the Pacific was promulgated.

I also enclose you a letter from M. de Osma to the minister of foreign affairs of Peru, which he handed to me unsealed for my perusal. I have left it in the same condition that you may acquaint yourself with its contents. When you have done so you will be pleased to seal it and send it to Mr. Tirado.

It being on many accounts desirable that the final disposal of this troublesome business should be known to you without delay, Mr. Miles will return to Lima as bearer of despatches by the steamer of the 20th.

As it is to be feared that some frauds will be attempted in the way of antedating charter parties, you will endeavor to acquire the knowledge of any attempt of that kind, in order to prevent imposition on the Peruvian government. Any information of this which you may be able to obtain you will impart to M. de Tirado.

The arrangement made is believed to be not merely the best that could be made for the owners and charterers of the vessels, but positively a good one. Inasmuch, however, as speculators, disappointed in their extravagant expectations of immense profit, may be induced to raise a popular clamor against it, I shall be glad to be informed by you of any facts which may tend to show, what I have no doubt is the case, that the settlement is really a good one for them.

The various matters alluded to in your despatches shall receive prompt attention at the department.

I am, sir, with great respect, your obedient servant,

EDWARD EVERETT.

Mr. J. RANDOLPH CLAY, &c , &c., &c.



Mr. Everett to Mr. Clay.

[No. 34.]

DEPARTMENT OF STATE,
Washington, November 23, 1852.

SIR: On the 21st September last, Mr. Conrad, Acting Secretary of State, transmitted to you from this department a despatch, accompanied by a private note, containing the request that the contents of the despatch should not be communicated to the Peruvian government until further instructions from this department. Notwithstanding the arrangement of the Lobos question, made known to you by the despatch No. 33, transmitted by Mr. Miles, it is still deemed advisable that you should withhold from the Peruvian government the views contained in the instruction above referred to.

I am, sir, very respectfully, your obedient servant,

EDWARD EVERETT.

J. RANDOLPH CLAY, Esq., &c., &c., &c.

Mr. Clay to Mr. Everett.

[No. 123.]

LEGATION OF THE UNITED STATES,
Lima, December 21, 1852.

SIR: I had the honor to receive on the 16th instant your despatch, (No. 33,) dated on the 18th ultimo, brought by Mr. Miles, who arrived on that day. It communicated to me the agreeable intelligence that a definitive arrangement had been concluded between the department and Mr. Osma of all the matters in controversy. The arrangement is undoubtedly the best that could have been made and one with which all parties should be satisfied, for whilst the title of Peru to the Lobos and other guano islands on the coast is acknowledged, and has been strengthened by the facts elicited during the discussion of her right of sovereignty over them, the vessels sent to load with guano at the Lobos islands are to receive twenty dollars a ton freight for carrying the article from the Chincha islands, which is sufficient to cover all the expense of fitting out the vessels and to leave a profit to their owners. They will all make what, in mercantile language, is called "a handsome voyage," as is shown by the fact that vessels, not included in the arrangement, are now loading with guano at sixteen dollars a ton, (\$16,) being twenty-five per cent. less than the freight given to those embraced in its terms. It is also evident that with such advantages given to their vessels the persons who engaged in the contemplated trade with the Lobos islands can have no claim of indemnification against either the United States or Peru. The average rate of freight earned by vessels chartered by this government to take guano to the United States and to England during the year 1851 and the first six months of 1852, was, I believe, between thirteen and fourteen dollars a ton. If, then, ship owners could afford to carry guano at that price, those who now receive twenty dollars

may, in some instances, feel disappointment, but they have every reason to be satisfied, however extravagant may have been their expectations of immense profit. I have requested Mr. Tirado to obtain a list of the prices at which vessels were chartered by the agents of the Peruvian government during the last two years, to prove that the arrangement is really a good one for the owners and charterers in question.

After making myself acquainted with the contents of your despatch I sought an interview with the minister of foreign affairs, and gave him the unsealed letter from Mr. Osma, communicating the basis of the arrangement. He took it, with the despatches addressed to him by Mr. Osma, immediately to the president, and upon his return expressed the great pleasure felt by General Echenique and himself that the question had been so satisfactorily settled. He added that the government of the United States had sustained its high character for justice and good faith, and had given a most magnanimous proof of its true friendship for Peru. That, under such circumstances, the Peruvian nation would take pleasure in ordering the vessels, fitted out to load guano from the Lobos islands, to be chartered by the agents at twenty dollars a ton, and trusted that their owners would thus be secured from any loss.

I told him that I participated fully in the pleasure he felt upon the occasion, especially as the acknowledgement made by the United States of the title of Peru to the Lobos and other guano islands on its coasts would effectually prevent its being disputed by any nation. That it was particularly agreeable to me to witness the gratification shown by the President and himself upon the settlement of the difficulty, as it was indicative of the great value which the Peruvian nation placed upon maintaining the intimate relations subsisting between the two countries.

The settlement of this question is of the utmost importance to Peru, for if the United States had denied the right of this government to the sovereignty over the islands of Lobos its credit abroad would have been destroyed for the time, as the introduction of the Lobos guano into the market, at a low price, would have effectually prevented the sale of that from the Chincha islands. Besides this, it would have lost the guano on the Lobos and the adjacent islands, amounting to about two millions of tons, estimated to be worth at least sixty millions of dollars. A national bankruptcy must have ensued, followed, probably, by a succession of revolutions in the country. This President Echenique knew, and is consequently duly grateful for the honorable conduct of the United States. His sentiments on the occasion are well expressed in the note addressed to me by Mr. Tirado on the 18th instant, a copy of which, as well as of the documents annexed to it, is enclosed.

Document No. 1 contains the approval and confirmation, on the 19th instant, by the President, of the terms of the arrangement entered into by Mr. Osma with the department, relative to the charter, by this government, of the vessels which were intended to load with guano at the Lobos islands.

Document No. 2 is a copy of a letter from Mr. Tirado to the Peru-

vian minister of finance, informing him of the arrangement, and instructing him to issue the necessary orders to the agents of the government for the fulfilment of its terms.

The minister of foreign affairs has, at my suggestion, consented that the "Manlius," the "Golden Era," and the "Michael Angelo," which have been chartered at sixteen dollars a ton, and sailed for the Chincha islands, shall receive the higher rate of twenty dollars, as being included in the arrangement above mentioned.

The "Sarah Chase" and "J. W. Page" arrived at the Lobos de Afuera about the 13th instant, but did not attempt to load after being warned off by the Peruvian forces stationed there. They are now on their way to Callao.

The "Sarah Chase" was the only vessel of the number fitted out to take guano from the Lobos islands which was said to be armed, and, as she did not attempt to load there, the Peruvian government resolved to withdraw the greater part of the force stationed at them.

As a measure of precaution, however, the minister of foreign affairs requested me to issue an official notice, addressed to the captains and masters of vessels of the United States arriving at the Lobos islands, which I did. Printed copies of that notice are herewith enclosed, and also a copy of my reply to Mr. Tirado, dated the 20th instant.

The Peruvian war steamer "Rimac," with General Denstua on board, returned to Callao yesterday.

In order to prevent the Peruvian government from being imposed upon by ante-dated or false charter parties, I suggested to Mr. Tirado that an order should be issued to the agents, Messrs. Barrera & Brothers, of this city, to submit to us all the charter parties of vessels claiming the benefit of the arrangement, for examination previous to chartering them to load at the Chincha islands. This has been done, and I trust that it will effectually prevent any fraud being practiced upon Peru.

It has caused me the greatest satisfaction to learn that the President, as well as yourself, approved of my conduct during the somewhat delicate negotiation on the subject of the Lobos islands. It has been arranged in the most honorable manner for both nations, and will unquestionably have a very great effect upon the relations of Peru with the neighboring republics.

I am, sir, with the highest respect, your most obedient servant,
J. RANDOLPH CLAY.

Hon. EDWARD EVERETT,
Secretary of State.

LEGATION OF THE UNITED STATES OF AMERICA,
Lima, Peru, December 16, 1852.

To the masters, captains or owners of vessels belonging to citizens of the United States.

Official information having been received at this legation from the Secretary of State, at Washington, that the government of the United

States acknowledges the rightful sovereignty of the Peruvian nation over the islands of Lobos, the undersigned, chargé d'affaires of the United States to the republic of Peru, hereby *notifies* all masters, captains and crews of vessels belonging to citizens of the United States to abstain from taking guano from those islands without the consent of the Peruvian government, but to proceed with their vessels to other destination, or to the port of Callao, at their option, where they will be chartered in due form by the agents of the Peruvian government to carry guano for its account from the islands of Chincha, according to the terms of the agreement entered into between the two governments.

J. RANDOLPH CLAY.

[Translation.]

LIMA, December 18, 1852.

By express order of his excellency the President, I have the honor of addressing myself to you, to say that the minister plenipotentiary in the United States has forwarded to this department, under the respective dates of the 17th and 18th of last month, the correspondence he has had with his excellency the Secretary of State at Washington relative to the islands of Lobos.

The attention of the government has been very agreeably drawn to the terms of his excellency Mr. Everett's note of the 16th of the same month, in which he conveys to Mr. Osma the opinion of the most excellent President of the United States, containing the explicit recognition of our rights to said islands of Lobos, and other islands on the coast of Peru of which the latter is in possession.

By this declaration the American government has done nothing more than to confirm the high confidence this government has always placed in that spirit of justice and friendship which has actuated the cabinet of Washington in cultivating relations between the two republics. Fortunately these relations have never experienced any serious difficulties, all matters which have been the subject of discussion up to this day having been settled in an honorable and satisfactory manner to both republics. Now that a fresh proof of these honorable sentiments on the part of the government of the United States has enhanced the value of these amicable relations, I must express to you the gratification I feel at such a result, as it cannot but contribute towards strengthening the bonds of a perfect understanding for the future, and in cherishing a due respect for the upright character of the high functionary who at present presides over the destinies of the country of Washington.

I hope that you will find an earnest of this confidence which the Peruvian government has placed in yours, throughout the discussion, in the measures that have been adopted for the purpose of facilitating the settlement of this matter; and, therefore, as the offers made by Mr. Osma, in his note of the 17th of November, to his excellency the Secretary of State, were nothing more than the application of the rules which the government had determined to follow with regard to

such vessels as might have been chartered under a false impression for the purpose of shipping guano at the Lobos islands, said government has had much pleasure in confirming the offers aforesaid, and has ordered by the decree, a copy of which I have the honor of enclosing to you, the same to be faithfully carried out.

I likewise send you a copy of the instructions which the government has addressed through this department to that of finances, for carrying out the provisions of said decree of confirmation, and for the full application of the offers that have been made in behalf of such vessels as might have arrived at the islands of Lobos before the communication of the 17th of November had been received, under the false impression above stated, and which had already been chartered on account of the government. In concluding this note, I must not omit saying to you, that inasmuch as throughout the discussion of this question you have been actuated by the same principles of justice and honorable spirit of friendship; and as you have contributed by the impartiality of your opinions, as it is shown by the note of his excellency the Secretary of State, to the fulfilment of your exalted task as the medium for preserving friendly relations, this government congratulates itself upon your being the functionary destined to maintain in this country and to draw closer said relations with the republic of the United States.

With sentiments of high consideration and regard, I am once more your very obedient servant,

JOSÉ MANUEL TIRADO.

[Translation.]

No. 1.

LIMA, December 19, 1852.

The conduct of the minister plenipotentiary of the republic at Washington, as exhibited in the communications in which he gives an account of his last proceedings in relation to the sovereignty and jurisdiction of the islands of Lobos, so honorably recognized by the government of the United States, being approved of, the government approves and confirms the offers contained in the note of said minister plenipotentiary to the Department of State of the United States of the 17th of November last, relative to the assumption by the government, on its own account, at the prices and on the terms contained in said note, of the contracts for loading, and of the instruments brought over by vessels which sailed from the ports of the United States, and from other ports in the Pacific, under the circumstances alluded to in said note, and within the period of time specified in it. Let this be communicated to the minister of finances, in order that he may give the necessary instructions, and see to the proper application of these concessions to those vessels which are alone entitled to enjoy the same.

TIRADO.

A true copy.

FELIPE BARRIGA ALVAREZ.

[Translation.]

No. 2.

LIMA, *December 17, 1852.*

I have the honor of sending you a copy of the arrangements entered into with the government of the United States, in pursuance of the offer made by our minister plenipotentiary to that republic, relative to the vessels which may have sailed from the ports of the Atlantic or the Pacific for the purpose of loading with guano at the Lobos islands, under the false impression that they would be at liberty to do so, and be assisted by our government.

The right of sovereignty of Peru having been recognized, it is the more necessary to redeem the pledges given by our representative, which have been approved by his excellency, and are contained in the following clauses:

1st. That all American vessels which sailed for the Lobos islands from the ports of the United States between the 5th of June and the 25th of August last shall be chartered, on account of the Peruvian government, to load for guano at the Chinchá islands, at the rate of twenty dollars a ton. 2d. That the instruments or tools used in digging for guano which said vessels may have brought over shall likewise be taken and paid for, on account of the government, security being given to the captains at Callao for the due value of the same previous to the delivery of the articles. 3d. That there shall likewise be chartered, on account of the government of Peru, at the rate of twenty dollars a ton, as in the case of those above mentioned, such vessels as may have been chartered in the ports of the Pacific for the purpose of loading with guano at Lobos, in consequence of instructions sent from the United States previous to the 25th of August, which could not have been revoked since, provided that the charter contracts shall be presented to and endorsed by the agents or consignees of Peruvian guano in the United States before the 1st of January next.

His excellency directs me to say to you that you will order the consignees of guano to carry out these compromises, with the understanding that, in order that this may not give rise to any increase of prices in future in the charter contracts which may be entered into with vessels now entitled to this concession of twenty dollars a ton, the fulfilment of said compromises shall be so managed as to express what are the current prices, intimating that the extra allowance up to the amount of twenty dollars is in consequence of the grant and the arrangement entered into with the government of the United States. This increase of prices shall be partaken by such vessels, which, like the barque "Manlius," may arrive before, and have been chartered in virtue of the order of the 23d of September, as comprised in said arrangements.

Finally, his excellency directs, with a view of preventing frauds, and that other vessels might suppose themselves entitled to this concession, without having any right to that effect, that, before chartering

vessels, the houses having charge of the papers and charter contracts, which the vessels referred to by the order aforesaid may have brought over, shall forward the same, in order that they may be examined by the government; apprizing you that I have also offered to the chargé d'affaires of the United States, who is interested for the honor of his government in seeing such vessels excluded as are not entitled to the benefits of the arrangement, to become a party to such examination.

I proceed, in conclusion, in order that you may be pleased to issue the proper instructions, to copy a portion of another note which has been addressed to me, under date of November 18th, by our minister at Washington, upon points connected with the foregoing arrangements, which is as follows: In order to carry this offer into effect, I have ordered Messrs. Barreda Brothers, in Baltimore, consignees of guano, to take, on their own account, at the rate of twenty dollars a ton, the charter contracts which may be presented to them, corresponding to the vessels alluded to above; of those of which I have given them a list, according to the data I have been able to collect up to this moment. I do not believe that those that have been chartered by persons who have entered into the Lobos islands speculations can exceed 25,000 tons, even supposing that they should have obtained some vessels in California, and at other points in the Pacific, which does not appear to me probable. I will forward to you by the next steamer a list of those that have sailed from these ports previous to the 25th of August. In the meanwhile, I beg that you will be pleased to issue orders to the governor of the Callao to admit those vessels which may present themselves there to take the instruments which said vessels have carried there to be used in digging for guano, and to give security for their value to the captains, in conformity with the foregoing exposition, and while I endeavor to procure from the parties interested a correct list of all of them. God preserve you.

JOSÉ MANUEL TIRADO.

The MINISTER OF STATE FOR FINANCIAL AFFAIRS.

True copy.

FELIPE BARRIGA ALVAREZ,
The Chief Clerk of Department of Foreign Affairs.

LEGATION OF THE UNITED STATES,
Lima, December 20, 1852.

I have read with great pleasure the note which your excellency addressed to me on the 18th instant, communicating to me the satisfaction felt by his excellency the president of Peru at the final arrangement made at Washington between the Secretary of State and the Peruvian plenipotentiary in the matter of the Lobos islands.

Your excellency has been pleased, in referring to the negotiations which have taken place between the two governments, to pay an eloquent tribute to the justice and honor of my country, and to the character of the President of the United States; and in returning to

your excellency my thanks for the compliment paid to them, I cannot, in candor and justice to my own sentiments, omit to say, that that eloquent tribute and compliment are equally applicable to the Peruvian nation, and the exalted character of its distinguished constitutional president.

Nor can I omit, on this occasion, to express to your excellency my estimation of the liberality of the Peruvian government, in ordering that the vessels fitted out by citizens of the United States to load at the Lobos islands shall be chartered for account of this republic. It is another and a certain proof of the friendship that Peru entertains for the United States.

The harmony and good will which have characterized the negotiation between the two governments on the subject of the Lobos islands, render it one of the most remarkable which has occurred in the annals of diplomacy. The circumstances connected with it were calculated to test the sincerity of their friendship, and the result cannot fail to render more intimate their existing relations, whilst it gives to the world a conspicuous example that international questions may be easily adjusted, where governments are animated with sentiments of mutual respect.

In returning my thanks for the very flattering expressions that your excellency was pleased to employ with regard to myself, I must bear testimony to the constant and dispassionate endeavors of your excellency to insure the just and amicable examination of the question, and that the labor and learned research of your excellency have contributed in a great degree to the final and satisfactory arrangement of it at Washington.

I have the honor to remain, with the assurance of my highest consideration,

Your excellency's most obedient servant,

J. RANDOLPH CLAY.

Mr. Everett to Mr. Osma.

DEPARTMENT OF STATE,

Washington, December 1, 1852.

SIR: I enclose you a copy of a letter from Mr. A. G. Benson, one of the persons concerned in freighting vessels for the Lobos islands. If in your power to come to an arrangement on behalf of your government like that which he suggests, it may be for the interest and convenience of all parties.

I pray you, sir, to accept the assurance of my high consideration.

EDWARD EVERETT.

Señor Don J. J. DE OSMA, &c., &c.

NEW YORK, *November 27, 1852.*

SIR: The action of this government in suspending its orders to protect our shipping while engaged in loading guano at the Lobos islands, and the proclamation of its officers in the Pacific warning ship-owners against violating the decrees of Peru in regard thereto, have induced many of the ship-owners to abandon their charters; and if this should be the case generally, the honorable Secretary will not fail to perceive how very injuriously it would affect my interests. All the expenses have been incurred for laborers, materials, &c., to load fully one hundred thousand tons of shipping; forty thousand of which are estimated to be under engagement up to this date. Now, what I desire is, that the Secretary of State will request the Peruvian minister to consent (under the arrangement recently made between the two governments) to liquidate at _____ tons, per register of ships, which shall be delivered on board vessels chartered by me, and to extend the time for presenting the charter parties for endorsement. Such a settlement made now will prevent future differences from occurring between the charterers of the ships, and the Peruvian government or its agents, and difficulties to our own government in the settlement of disputes arising therefrom; and as there is no reason to suppose the minister of Peru would object to such a request, I beg leave most respectfully and earnestly to hope that it may be made, and have the honor to remain your most obedient servant,

A. G. BENSON.

HON. EDWARD EVERETT,
Secretary of State, Washington.

Mr. Clay to Mr. Everett.

[No. 126.]

LEGATION OF THE UNITED STATES,
Lima, January 24, 1853.

SIR: The "Sarah Chase" arrived at Callao on the 1st instant from the Lobos islands. She, having been fitted out as a kind of store-ship, or tender, to the vessels chartered by A. G. Benson and J. C. Jewett, brought a number of articles which, strictly speaking, cannot be classed with those made use of in taking guano at the Chincha islands.

Mr. J. O. Calebs, who was to act as agent for the parties had they been protected in loading at the Lobos, came as passenger in the Sarah Chase, and is furnished with instructions from A. G. Benson in relation to his interests in Lima.

I have had an interview with the minister of foreign affairs concerning the articles on board of the Sarah Chase, and find him disposed to grant every facility towards despatching and loading that vessel at the Chincha islands, but unwilling to take for account of the government the stores and other articles brought in her, which cannot properly be classified as necessary for working and putting guano on board of ships.

Mr. Benson also claims that, according to the spirit of the arrangement made between the United States and Peru with regard to the vessels chartered by Captain Jewett and himself to proceed to the Lobos, no port or tonnage duties in Peruvian ports nor any commissions to the guano agents are to be charged.

The minister of foreign affairs does not admit that, by the terms of the arrangement, the vessels referred to are entitled to an exemption from those duties; and as respects the commissions, it is a matter to be settled between the parties and Messrs. Barreda & Brother, as the government itself pays them a commission of six per cent. for transacting the business of the agency, and has neither part nor control over the commissions charged by the Barredas to the owners of vessels chartered to carry guano, nor over the other details of their business.

It appears to me that the decision of this government upon both questions is just, because there is no sufficient reason why the ships chartered by A. G. Benson and Captain Jewett for what, to say the least, was an *irregular* trade, should be placed upon a better footing, and be exempted from duties and charges paid by vessels in the regular course of lawful commerce with the ports of Peru. And as the commissions charged by Messrs. Barreda & Brother to the owners of vessels chartered to carry guano are not to the profit nor under the control of the Peruvian government, it cannot be fairly held responsible for those charged to Messrs. Benson and Jewett.

As no mention is made of the exemptions claimed by them in the arrangement entered into at Washington in November last, I beg to refer the matter to the decision of the department.

I have the honor to be, sir, your obedient servant,

J. RANDOLPH CLAY.

HON. EDWARD EVERETT,
Secretary of State.

Mr. Everett to Mr. Clay.

[No. 36.]

DEPARTMENT OF STATE,
Washington, February 9, 1853.

SIR: I enclose herewith a copy of a letter addressed by Mr. A. G. Benson, of New York, to the President, and of one also addressed by him to the Peruvian minister therein referred to, both relating to the subject of freighting certain vessels in which Mr. Benson is interested with guano, under the arrangement entered into between the representative of Peru and the government of the United States.

You will be pleased to examine the facts in this case, and proceed in reference to it in accordance with the general instructions already furnished to you in my despatch No. 33, and with the basis of settlement agreed upon between the two governments.

Your despatches to No. 125, inclusive, have been received.

I am, sir, respectfully, your obedient servant,

EDWARD EVERETT.

JOHN RANDOLPH CLAY, Esq., &c., &c., &c.

Mr. Clay to Mr. Everett.

[No. 133.]

LEGATION OF THE UNITED STATES,
Lima, February 25, 1853.

SIR: I have received a letter from A. G. Benson, dated New York, January 4, 1853, in which, after referring to the vessels chartered by him to take guano from the Lobos islands, and the consequent arrangement made between the United States and Peru, by which they were to be re-chartered by the latter government, at the rate of twenty dollars per ton, he observes in a postscript:

"Should any charges be made by Peru for port expenses upon any of the vessels chartered by me, I trust that you will see that no such be exacted, as by the tenor of the arrangements such cannot be collected from them or myself, or any commissions charged upon the freights by any agent of the Peruvian government, and collected or exacted from me."

I have also received a duplicate of the letter post-marked at Panama on the 6th of February.

I beg to call the attention of the department to the fact, that on the 8th ultimo Mr. Benson entered into an agreement with F. Barrera & Brother, of Baltimore, the agents of the Peruvian government, containing the following clauses, in substance:

1. Mr. Benson to endorse to F. Barrera & Brother the charter-parties of the vessels named in the list annexed to despatch No. 30 from the department, with the exception of the "J. W. Page."

2 and 4 stipulate that the charter-parties of the "Cyrus," and others named in the list enclosed herewith, are to be endorsed to Barrera & Brother.

3. A. G. Benson's vessels to be allowed "to be despatched direct from the Chincha islands, San Lorenzo islands, Callao, Paita, or the Lobos islands, (where they may arrive or call for orders,) and from the said Chincha islands direct to the United States, as per charter parties."

5. It is stipulated that "F. Barrera & Brother will pay to these vessels transferred by Mr. Benson the freight, as stipulated in the charter-parties; and the difference between the rate therein agreed and that of twenty dollars, as allowed by the Peruvian minister, will be paid to Mr. Benson on the same terms as to the vessels, with deduction of five per cent. commission on the total amount of freight at twenty dollars that Mr. Benson agrees to pay to said F. Barrera & Brother."

6. The endorsement of A. G. Benson to be void, in case the captains of the vessels refuse to fulfil the charter-parties.

7. A. G. Benson to have the right of claiming the penalties stipulated in the charter-parties, in case of non-fulfilment by the captains of the vessels.

Yet, with a knowledge of this agreement with Barrera & Brother, Mr. Benson transmitted to me a duplicate of his letter of the 4th of January, without mentioning the stipulations contained in it, leaving me to infer that the only agreement made with regard to the vessels

chartered to go to the Lobos islands was that entered into between Mr. Osma and yourself in the month of November last, by which their freight was to be fixed at twenty dollars per ton. He requests me to interfere and prevent his being "charged any commissions upon the freights," when he must have known that he intended to agree with F. Barreda & Brother to pay them a commission of five per cent. upon the amount of freight earned by the vessels sent out by him to the Lobos! I do not recognize the right in Mr. Benson to place his own construction upon the agreement between the two governments above referred to, nor do I wish to correspond with him about his vessels or his interests, unless with a knowledge of all the circumstances connected therewith. I shall refer him to the department for any advice or explanation he may require.

I am, sir, very respectfully, your obedient servant,

J. RANDOLPH CLAY.

The Hon. EDWARD EVERETT, *Secretary of State.*

List of vessels contained in the agreement made between A. G. Benson and F. Barreda & Brother, of Baltimore, January 8, 1853, in addition to those contained in the list transmitted to the Department of State in J. C. Jewett's letter, dated August 16, 1852:

Cyrus.....	257 tons.	} Chartered at the Sandwich Islands.
Helen Brooks.....	464 tons.	
Emily Taylor.....	387 tons.	
Tartar.....	380 tons.	
Remittance.....	574 tons.	
W. H. Harbeck.....	872 tons.	
Realm.....	547 tons.	
A. M. Lawrence.....	500 tons.	
Element.....	450 tons.	
Alert.....	764 tons.	
Olivia.....	650 tons.	
Chimborazo.....	900 tons.	
Rochambout.....	900 tons.	
Emma Lincoln.....	300 tons.	
Muscongus.....	669 tons.	
Montreal.....	392 tons.	
Paragon.....	900 tons.	
N. H. Wolf.....	449 tons.	
St. Andrews.....	288 tons.	
B. L. Harriman.....	645 tons.	
Charles Holmes.....	792 tons.	
Henry Harbeck.....	398 tons.	
Colonel Cutts.....	782 tons.	
Republic.....	792 tons.	
Elvira Harbeck.....	349 tons.	
Plymouth.....	425 tons.	
Ticonderoga.....	1,072 tons.	
St. Thomas.....	714 tons.	

Mr. Clay to Mr. Everett.

[No. 136.]

LEGATION OF THE UNITED STATES,
Lima, March 25, 1853.

SIR: I have the honor to enclose to the department a copy of an agreement concluded on the 8th of January last, between A. G. Benson, of New York, and F. Barreda & Brother, of Baltimore, relative to the vessels chartered by the former to load with guano at the Lobos islands. This is the agreement mentioned in my despatch No. 133, dated on the 25th ultimo, to which I beg respectfully to refer.

I am, sir, your most obedient servant,

J. RANDOLPH CLAY.

Honorable EDWARD EVERETT,
Secretary of State.

Agreement between A. G. Benson, of New York, and F. Barreda & Brother, of Baltimore.

The undersigned, A. G. Benson, esq., of New York, and F. Barreda & Brother, of Baltimore, the first as charterer for the vessels to be named thereunto, bound to load at the Lobos islands, and the second acting as agents for the Peruvian government and under instructions of his excellency the envoy extraordinary and minister plenipotentiary of Peru at Washington, have entered into the present agreement, in accordance with the concession made by Mr. Osma, for the taking up under charter for account of the Peruvian government of the said vessels chartered by the said Mr. Benson, to be sent and loaded with guano at the Lobos islands, to wit:

1st. A. G. Benson will endorse to F. Barreda & Brother the charter parties of the following vessels, named in the list directed by Mr. Jewett to the Department of State on the 16th of August.

Lone Star.....	500 tons ; chartered at \$13 per ton.
Java	540 tons ; chartered at 14 per ton.
Matilda	410 tons ; chartered at 16 per ton.
Manchester.....	570 tons ; chartered at 16 per ton.
St. Peter.....	457 tons ; chartered at 16 per ton.
Arcole	670 tons ; chartered at 16 per ton.
Sea King.....	775 tons ; chartered at 14 per ton.
Adelaide Metcalf	673 tons ; chartered at 15 per ton.
Tangiers	373 tons ; chartered at 14 per ton.
Philomela	470 tons ; chartered at 16 per ton.
Sarah Chase	283 tons ; chartered at — per ton.
Margaret	450 tons ; chartered at 14 per ton.
Commonwealth	642 tons ; chartered at 14 per ton.
J. Q. Adams	660 tons ; chartered at 14 per ton.
Hampden	646 tons ; chartered at 14 per ton.
Alcopt.....	329 tons ; chartered at 13 per ton.
Z. D.	312 tons ; chartered at 16 per ton.

The said charter-parties to be fulfilled by the said F. Barreda & Brother, provided that the captains of these vessels may agree to load at the "Chincha islands," instead of the Lobos islands, as they may have been ordered, without increasing the rate of freight or asking for any change in the conditions stipulated with Mr. Benson.

2d. The charter-parties of the vessels :

Cyrus, 257 tons, chartered at San Francisco, on the 3d September, at \$17 per ton;

Helen Brooks, 464 tons, chartered at San Francisco, on the 3d September, at \$17 per ton ;

Emily Taylor, 387 tons, chartered at San Francisco, on the 3d September, at \$18 per ton ; and

Tartar, 380 tons, chartered at San Francisco, on the 3d September, at \$18 per ton, will also be endorsed by Mr. Benson and fulfilled by F. Barreda & Brother, provided that the captains may agree to come to Hampton Roads for orders to discharge in any port of the United States south of Cape Ann, instead of going to England, as per charter-parties, and to load at the Chincha islands ; as per article 1st, and also provided that, from the investigation to be made at San Francisco by the agent of the Peruvian government, it may appear that the said charter-parties were signed by the agent of Mr. Benson before he could receive orders suspending his authorization to charter, and dated on the 25th of August.

3d. With the view of giving to Mr. Benson all possible facilities to obtain from the owners, agents, or captains of the vessels he has chartered the change of place to load, asked for per articles 1st and 2d, F. Berreda & and Brother, acting under instructions from the Peruvian minister, offer to despatch the said vessels direct from one of the Chincha islands, from San Lorenzo islands, or Callao, or from Paita, or the Lobos islands, (where they may arrive or call for orders,) and from the said Chincha islands direct to the United States, as per charter-parties.

4th. The following vessels, said to have been chartered by Mr. Benson before the 25th of August, and not included in the list above mentioned, will be taken up and loaded by F. Barreda & Bro. under the same conditions, (say at the Chincha islands for the United States,) provided that Mr. Benson presents satisfactory proofs, of legal force, about the legality of the charter-parties, (say the declaration under oath from agent, witnesses of character, as required by F. Barreda & Bro. in their letter of 2d instant.)

Remittance, 574 tons, chartered in New York, on the 21st of August, at sixteen dollars per ton.

W. H. Harbeck, 872 tons, chartered in New York, on the 21st of August, at sixteen dollars per ton.

Realm, 547 tons, chartered in New York, on the 21st of August, at sixteen dollars per ton.

A. M. Lawrence, 500 tons, chartered in New York, on the 21st of August, at seventeen dollars per ton.

Element, 450 tons, chartered in New York, on the 16th of August, at seventeen dollars per ton.

Alert, 764 tons, chartered in New York, on the 21st of July, at sixteen dollars per ton.

Olivia, 650 tons, chartered in New York, on the 14th of August, at fifteen dollars and seventy-five cents per ton.

Chimborazo, 900 tons, chartered in New York, on the 14th of August, at fifteen dollars and seventy-five cents per ton.

Rochambout, 900 tons, chartered in New York, on the 13th of August, at fifteen dollars and seventy-five cents per ton.

Emma Lincoln, 300 tons, chartered in New York, on the 13th of August, at fifteen dollars and seventy-five cents per ton.

Muscongus, 669 tons, chartered in New York, on the 16th of July, at sixteen dollars per ton.

Montreal, 392 tons, chartered in New York, on the 18th of August, at sixteen dollars per ton.

Paragon, 900 tons, chartered in New York, on the 13th of August, at sixteen dollars per ton.

N. H. Wolf, 449 tons, chartered in New York, on the 26th of July, at sixteen dollars per ton.

St. Andrews, 288 tons, chartered in New York, on the 27th of July, at sixteen dollars per ton.

B. L. Harriman, 645 tons, chartered in New York, on the 30th of July, at sixteen dollars per ton.

Charles Holmes, 792 tons, chartered in New York, on the 26th of July, at sixteen dollars per ton.

Henry Harbeck, 398 tons, chartered in New York, on the 14th of August, at sixteen dollars per ton.

Colonel Cutts, 782 tons, chartered in New York, on the 12th of August, at sixteen dollars per ton.

Republic, 792 tons, chartered in New York, on the 12th of August, at sixteen dollars per ton.

Elvira Harbeck, 349 tons, chartered in New York, on the 16th of August, at sixteen dollars per ton.

Plymouth, 425 tons, chartered in New York, on the 19th of August, at sixteen dollars per ton.

Ticonderoga, 1,072 tons, chartered in New York, on the 17th of August, at sixteen dollars per ton.

St. Thomas, 714 tons, chartered in New York, on the 16th of August, at sixteen dollars per ton.

5th. F. Barreda & Brother will pay to these vessels, transferred by Mr. Benson, the freight as stipulated per charter-parties; and the difference between the rate therein agreed and that of twenty dollars, as allowed by the Peruvian minister, will be paid to Mr. Benson, on the same terms as to the vessels, with deduction of five per cent. commission on the total amount of freight at twenty dollars that Mr Benson agrees to pay to the said F. Barreda & Brother.

6th. It is hereby stipulated and agreed that the endorsement of Mr. Benson will be void and without effect for those charter-parties or vessels whose captains, under any pretence, may refuse to fulfil them or to change the place of loading, as required in this agreement. The said charter-parties, with copy of protest of the agent of F. Barreda & Brother, to be returned to Mr. Benson without any responsibility.

F. Barreda & Brother for the endorsement now made, or for any of the conditions, stipulations, or allowances made to Mr. Benson or to the vessels by the said F. Barreda & Brother, on their name or on that of those they represent in this present agreement; as it is understood that this arrangement, with all its conditions, stipulations, and allowances, has been made, is to be considered, and will be executed, only with reference to and for those vessels whose captains may be willing to carry into effect fully and strictly the charter-parties made with the said A. G. Benson, or his agents, and the alterations hereby mentioned and agreed between the said Benson and F. Barreda & Brother, in accordance with and fulfilment of the offer made by the Peruvian minister in the name of the Peruvian government.

7th. It is understood that Mr. Benson shall have the right of claiming the penalties stipulated in the charter parties, or to be claimed on them, from those vessels whose charter-parties may be returned to him by F. Barreda & Brother in accordance with the preceding articles, as the non-validity of the endorsement leaves to him all the rights, privileges, and responsibilities of his engagement.

In testimony thereof, the parties have signed four copies of this agreement made at Baltimore on the 8th of January, 1853.

F. BARREDA & BRO.

Mr. Clay to Mr. Everett.

[No. 137.]

LEGATION OF THE UNITED STATES,
Lima, March 25, 1853.

SIR: I have the honor to acknowledge the receipt of despatch No. 36 from the department, dated the 9th ultimo, transmitting a copy of a letter addressed by Mr. A. G. Benson, of New York, to the President, and of one addressed to the Peruvian minister, both relating to the subject of freighting certain vessels with guano, under the arrangement entered into between the representative of Peru and the government of the United States.

The vessels referred to by Mr. Benson are the barque *Golden Era*, the barque *J. W. Paige*, ship *Berlin*, and ship *Defiance*. All of these vessels are comprised within the terms of the arrangement, and I presume there will be no difficulty in their case, so far, at least, as the two governments are concerned.

The *Golden Era* arrived at Callao early in last November, and was chartered at the rate of sixteen dollars a ton by the agents of the Peruvian government. Nevertheless, when the news of the arrangement between the two governments was received, the minister of foreign affairs, upon my application, ordered the charter to be amended, so as to give the charterer the increased sum of twenty dollars a ton instead of sixteen, although the vessel had already sailed for the islands of Chincha.

The captain of the *J. W. Paige* protested against the charter originally entered into with Mr. Benson, but I am told he made use of Mr. Benson's name to obtain the higher rate of twenty dollars per ton.

The Berlin and the Defiance have not arrived as yet at Callao, but will, I have no doubt, receive the higher rate from the agents.

It appears to me that the interference of the government of the United States can be claimed in behalf of those vessels only so far as may be necessary to secure to them a freight of twenty dollars per ton from the Peruvian government; and that any dispute which may arise between Mr. Benson and the owners of the vessels, as to who is entitled to receive the benefit of the higher rate of freight, should be arranged by them, either amicably or by a resort to a court of justice in the United States. It cannot be expected that the government should take judicial cognizance of the transactions.

I am, sir, very respectfully, your obedient servant,

J. RANDOLPH CLAY.

Hon. EDWARD EVERETT,
Secretary of State.

Mr. Clay to the Secretary of State.

[No. 141.]

LEGATION OF THE UNITED STATES,
Lima, April 11, 1853.

SIR: Despatch No. 39, from the department, dated February 24th, together with the documents accompanying it, have been received at this legation.

The observations made by Mr. William Miles, in his letter of the 14th of February, in reference to the vessels chartered by Mr. Benson to take guano from the Lobos islands are, in the main, correct; but he is mistaken in stating that "Mr. Clay and Mr. Tirado constitute a commission, before whom the facts and charter party of every vessel must be laid before loading. They consult Mr. William Foster, (Alsop & Co.,) whose opinion is, no doubt, always adopted."

No regular commission exists, and the interference of Mr. Tirado and myself has been limited to those cases in which the agents of the Peruvian government, Messrs. Barrera & Co., did not think themselves competent to decide. There has been no difficulty connected with any vessel chartered or sent by Mr. Benson to load guano at the Lobos islands, except the "Sarah Chase." In that case, the Peruvian minister of foreign affairs did not think that the government was obliged, under the arrangement made at Washington, on the 19th of November last, to take for its account the stores and other articles of her cargo not generally used in working guano. I agreed with him in that opinion, but suggested to him that, as the amount of the invoice did not exceed ten thousand dollars, and the articles could be used in the Peruvian navy, it would save trouble with Mr. Benson and his agent if the government agreed to take them at a fair valuation. The President has, consequently, directed the minister of finance to issue an order to that effect to the guano agents of the Peruvian government. A copy of the decree, and of the note from Mr. Tirado, communicating the same to me, are enclosed herewith.

I have also the honor to enclose a copy of a decree, dated the 21st

of February last, approving the agreement entered into between A. G. Benson and Messrs. F. Barreda & Co., the agents of the Peruvian government, in Baltimore, of the 8th of January last, in virtue of which, the charter-parties of the vessels engaged by the former to take guano from the Lobos islands were endorsed over to the said agent.

I transmitted a copy of the agreement, with despatch No. 136, dated the 25th ultimo. And here it may be observed, that the discussion of the title to the Lobos islands has proved, in the end, advantageous to Peru; as without the vessels chartered by Mr. Benson, there would not have been sufficient ships to carry one-half the quantity of guano required for the consumption in the United States. The agents of the Peruvian government are now chartering transient vessels at twenty dollars the ton to carry guano to that market, and I have been informed by Mr. Barreda that he shall not be able to send forward enough to meet the demand for the article.

It is satisfactory, therefore, to believe that no losses will accrue to any one from the Lobos island question.

I have the honor to be, sir, your obedient servant,

J. RANDOLPH CLAY.

Hon. SECRETARY OF STATE.

[Translation.]

LIMA, *March 30, 1853.*

Notwithstanding that, as you are aware, the government is not obliged, by the arrangement concluded at Washington on the 18th of November last, to take more articles out of those brought by vessels chartered by Mr. Benson than such as are intended to be used in working guano, yet, in consideration of the reason stated in the decree which I have the honor of communicating to you, it has determined to take those which remain from the invoice of the "Sarah Chase" and are in the public stores.

This measure which the government has taken, with the assurance that it was not obliged to do so, and solely out of considerations of an economical character, without the power of taking this as a rule for any other case, I hope you will not fail to appreciate as a mark of attention to the interests of American citizens of a condescending character on the part of the government, yet sufficient to explain its spirit of consideration.

In order that you may not be kept from a due knowledge of this resolution, I have the honor of communicating the same to you, subscribing myself, in the meanwhile, with the highest consideration, your obedient servant,

JOSÉ MAN'L TIRADO.

DECREE.

LIMA, March 30, 1853.

To the Minister of State for Financial Affairs:

The government has examined the list of articles deposited at the custom-house, brought by the barque "Sarah Chase," and which, as it is understood, are now reduced to the number specified in the subjoined list. It is evident that the greater part of these articles are not included in the arrangement which our minister plenipotentiary made in Washington on the 18th of November last; seeing that, by this arrangement, the government is only obliged to take, at their just valuation, such articles as are necessary for working guano. But inasmuch as there are some articles which may be used by the navy, the same may be taken at a just valuation merely for the convenience of the service, an appraiser being appointed on the part of the captain of the "Sarah Chase," and another by the state.

Thus, then, H. E. directs—First. That the articles contained in the enclosed list shall be valued in this manner, and with the concurrence of the captain of the "Sarah Chase," as it has been stated. Secondly. That the articles marked *I* shall be deposited in the naval stores for the service of the vessels of the navy. Thirdly. That the remainder, having no marks, shall be definitely sold on account of the state, in order to avoid the difficulties which would attend the returning of such small articles; and fourthly, that the whole of the invoice, after the same has been valued as heretofore mentioned, shall be accounted for to the captain of the "Sarah Chase." I have the honor of communicating this to you by supreme order, requesting that you will be pleased to issue the proper instructions to the house of Barreda & Bro. God preserve you.

JOSE MAN'L TIRADO.

True copy.

FELIPE BARRIGA ALRAVEZ,
Chief Clerk.

 [Translation.]

Decree of the President of Peru, ratifying the agreement between A. G. Benson and Barreda & Co. of the 8th January, 1853.

LIMA, February 21, 1853.

Having considered the agreement entered into by Barreda & Brother, under instructions from the plenipotentiary of Peru at Washington, said agreement is approved; and in consideration that by the charter contracts the charges and expenses and port duties were chargeable to the charter-parties, A. G. Benson, and now, by the endorsement of the former, appertain to the government, the minister of finances will direct what is proper, both in order to carry out the conditions of this agreement, as well as to prevent the levying of tonnage and port duties upon vessels mentioned in the subjoined lists,

and which shall belong to the category of those vessels entitled to enjoy such concessions.

The aforesaid minister of finances shall moreover give proper orders for the payment of the expenses of port agency at the Chincha islands, with the understanding that by such agency and commission for the despatch of vessels at the Chincha islands the government shall not pay more than the sum of one hundred dollars for each of the vessels alluded to in this agreement, which shall finally be despatched at the Chincha islands.

Reply to the minister plenipotentiary.

[Signature of S. E. Tirado.]

Mr. Clay to Mr. Marcy.

[No. 146.]

LEGATION OF THE UNITED STATES,
Lima, May 20, 1853.

SIR: I have the honor to transmit to you translations of a note from the minister of foreign affairs, and of a decree of the president of Peru, dated May 7th, concerning the "Alioth" and "Hampden," chartered by A. G. Benson on the 29th of May and 22d of July, 1852, to load with guano at the islands of Lobos; the charter parties of which were endorsed over to Messrs. Barreda & Brother, agents of the Peruvian government, under agreement made between Mr. Benson and that house. The captains of the said vessels, having protested the charter parties made with Mr. Benson, received others from Barreda & Brother, of Lima, under a clause in the agreement between the parties, that Messrs. Barreda & Brother were not to be responsible in case the captains refused to fulfil the charter parties endorsed to them. The Peruvian government, to secure itself, has directed the agents to give the new charter parties under protest, and notified me accordingly.

As the arrangement made between Mr. Benson and Barreda & Brother, on the 8th of January last, was a matter of private agreement in which the United States were not consulted, the government is not accountable for any losses that Mr. Benson may sustain by the refusal of the captains to fulfil the charter parties made by him, particularly as the Peruvian government has in no instance refused to conform to the agreement made at Washington on the 19th of November, 1852. All questions between the parties interested in the vessels being subject-matter for a court of justice, and not for the intervention of the government. I stated in my answer to Mr. Tirado, dated the 14th instant, that "the United States cannot assume any responsibility in the premises."

Thirteen of the twenty vessels, mentioned in the list annexed to despatch No. 30 from the department, have arrived and have gone to the islands of Chincha for guano.

I am, sir, very respectfully, your obedient servant,

J. RANDOLPH CLAY.

HON. WILLIAM L. MARCY,
Secretary of State.

Rep. Com. 397—13

[Translation.]

LIMA, May 7, 1853.

Messrs. Barreda & Brother have represented that the vessels "Alioth" and "Hampden," included in the list of vessels whose charter parties were endorsed by Benson & Co. to the consignees of guano in Baltimore, in virtue of the agreement concerning the charter parties, to take that article from the islands of Lobos, having arrived at Callao, the captains of the said vessels refuse to comply with the said charter parties, and that, in consequence of such refusal, those vessels have been newly chartered for account of the government, at the current rate of the market. His excellency the President, in view of this representation, has issued the decree, a copy of which I have the honor to enclose to you for your information.

I repeat to you the sentiments of consideration and respect with which I am, sir, your obedient servant,

JOSÉ MANUEL TIRADO.

[Translation.]

Decree.

LIMA, May 7, 1853.

In virtue of the agreement made in the United States, under authority of the minister of the republic, the obligation to freight for account of the firm of "Benson" ceases, in case the captains refuse to submit to that agreement; communicate the contents of this note to the minister in the United States, and approve the measures taken by the house of Barreda & Brother, in virtue of its having chartered the vessels referred to in this note; in that it has acted, consulting not only the national interest, but also that of the United States, for whose markets it is necessary to provide guano, making use of the vessels which offer themselves, without the rights of the firm of Benson being thereby prejudiced, but rather favored; seeing that if they have any, in such cases, they can proceed against the captains who have refused to carry out the charter parties, for account of that firm, and against the sums of money which, under the new charter parties, are to be paid to the house of Barreda & Brother; the responsibility of the government, on the other hand, being ended as far as those vessels are concerned, and all legal proceedings being fulfilled by the protest made by the house of Barreda & Brother; communicate this, also, to the minister of the United States in this capital, and transcribe it for the ministry of finance.

Signed by his excellency,

TIRADO.

LIMA, May 14, 1853.

I had the honor to receive, on the 11th instant, the note that your excellency addressed to me on the 7th, enclosing a decree of the Peruvian government of the same date. From the note referred to, it appears that the captains of the "Alioth" and "Hampden," having refused to fulfil the charter parties of those vessels made by A. G. Benson & Co. and endorsed over to Messrs. Barreda & Brother, of Baltimore, they have been rechartered by the agents of the Peruvian government in Lima, to take guano for its account from the islands of Chincha, after having protested against the said captains; which proceedings of Messrs. Barreda & Brother have been approved by the decree above mentioned.

The United States not having been previously consulted by any of the parties to the agreement made between Messrs. Barreda & Brother, of Baltimore, and A. G. Benson on the 8th of January last, under authority from the diplomatic agent of Peru, at Washington, all questions which may arise under the said agreement must, consequently, be arranged between the parties interested therein without the interference of the government of the United States, as it cannot assume any responsibility in the premises.

I remain, with the assurance of my most distinguished consideration, your excellency's most obedient servant,

J. RANDOLPH CLAY.

LIMA, May 14, 1853.

From information received at this legation it appears that the ship "Defiance," now loading with guano at the islands of Chincha, was chartered by Messrs. Jones & Johnson, of New York, to A. G. Benson, on the 19th of July, 1852, to take guano from the islands of Lobos; and that, subsequently, Messrs. Jones & Johnson, being apprehensive that the said vessel would not be permitted by the Peruvian government to load for account of Mr. Benson, made a second charter of the vessel to Messrs. Barreda & Brother, of Baltimore. As, however, the "Defiance" sailed from New York within the dates specified in the arrangement made between the United States and Peru, at Washington, on the 19th of November last, and therefore can be admitted to carry out the original charter made between the owners and A. G. Benson, I have the honor to request, in the interests of the parties concerned, that your excellency will cause the necessary orders to be issued, so that the cargo of guano taken by the ship *Defiance* shall be considered as given to her under the charter made by Messrs. Jones & Johnson with A. G. Benson, and that the subsequent charter of Messrs. Barreda & Brother, of Baltimore, be cancelled.

I take pleasure in renewing to your excellency the assurance of my most distinguished consideration,

J. RANDOLPH CLAY.

Mr. Marcy to Mr. Clay.

[No. 8.]

DEPARTMENT OF STATE,
Washington, November 23, 1853.

SIR: I transmit, herewith, a voluminous series of papers, originals, and transcripts, a list of which is subjoined, in support of a claim presented by Mr. A. G. Benson, of New York, against the republic of Peru, for indemnity for losses which he alleges he has sustained in consequence of the violation, as he states, by the agents of that government of the agreement entered into between the minister of that republic and my predecessor on the 17th of November last, and also of certain private agreements made between Mr. Benson and the aforesaid Peruvian agents at subsequent periods.

Your knowledge of the complications involved in these transactions, and indeed of the whole case, from its inception to this moment, are considerations which have induced the reference of this claim to your management.

The department cannot, with the information it possesses, express an intelligent opinion upon the justice of Mr. Benson's claims. The government of the United States looks to Peru for the faithful fulfillment of the agreement of November. That agreement was explicit and decisive, and Mr. Benson is justly entitled to all the advantages conceded by it.

It is not doubted that you will succeed in making such an arrangement as will be just and acceptable to all parties concerned.

Your despatches to No. 166, inclusive, have been received.

I am, sir, very respectfully, your obedient servant,

W. L. MARCY.

JOHN RANDOLPH CLAY, Esq., &c., &c., &c.

List of papers transmitted.

- A. Captain J. C. Jewett to Secretary of State, (copy,) June 2, 1852.
- B. Mr. Webster in reply, (copy,) June 5.
- C. Copies of letters to and from Secretary of State.
- D. Copy of orders, &c., from Brigadier General Densteen, October 18, 1852, to Captain Calebs.
- E. Captain Calebs to Mr. Benson, December 13, 1852, (copy.)
- F. Same to captains of Benson's vessels, (copy.)
- G. R. W. Trundy's affidavit, original, November 1, 1853.
- H. Copy of J. C. Jewett's affidavit, October 18.
- I. Copy of R. W. Trundy's affidavit, October 18.
- K. List of vessels, tonnage, &c.
- Letter from Samuel F. Tracy to A. G. Benson, November 7, 1853, original.

Mr. Clay to Mr. Marcy.

[No. 205.]

LEGATION OF THE UNITED STATES,
Lima, June 1, 1854.

SIR: After the arrangement entered into between the Secretary of State and the Peruvian minister at Washington, on the 17th of November, 1852, it might have been supposed that the government of the United States would not have been troubled with any further claims from the parties engaged in the expedition fitted out to take guano from the Lobos islands. The United States had formally recognized the title of Peru to them, and the Peruvian government engaged that its agents should take, at the rate of twenty dollars per ton, the vessels chartered, within a certain date, by A. G. Benson and others.

That the arrangement was considered very satisfactory by the Secretary of State will be seen by referring to despatch No. 33, addressed to me, on the 18th of November, 1852, in which he says: "The arrangement made is believed to be not merely the best that could be made for the owners and charterers of the vessels, but positively a good one. Inasmuch, however, as speculators, disappointed in their extravagant expectations of immense profit, may be induced to raise a popular clamor against it, I shall be glad to be informed by you of any facts which may tend to show, which I have no doubt is the case, that the settlement is really a good one for them."

And so, undoubtedly, it was; for neither Mr. Benson nor his associates in the business were, in my opinion, entitled to much consideration on the part of the Peruvian government, because the vessels chartered by them were fitted out to take the property of a nation with which the United States were at peace, and from islands closed for many years, by successive decrees, to foreign and native vessels, and any that might go there were liable to confiscation. If the Peruvian government had refused to enter into an arrangement, and seized the vessels chartered by Mr. Benson when they arrived at the Lobos, it would have been difficult for the United States, under the principles of international law, justly to have prevented their condemnation.

Notwithstanding the specious narrative with which Mr. Benson commences his letter to you, dated the 15th of November, 1853, and the voluminous documents he exhibits, I think that an examination into the facts connected with his case will show that the Peruvian government has fulfilled the stipulations of the arrangement of the 17th of November, 1852.

My opinion of Mr. Benson's Lobos island expedition is expressed in despatch No. 117, dated November 11, 1852, and all the transactions which have since taken place in connexion therewith have served to confirm it.

The hastily formed ideas and statements of certain British subjects and of the British press, to which Mr. Benson refers, do not, as it appears to me, give the least force or color to his claim. Nor does the letter of the Secretary of State, (Mr. Webster,) of the 5th of June, 1852, in reply to that addressed to him by Captain Jewett, on the 2d

of that month, afford any grounds for Mr. Benson to claim damages from the United States, and most certainly none upon which to bring forward a claim against Peru.

In examining into the validity of Mr. Benson's pretensions, the fact that the Lobos islands had for ages formed an integral part of the territories of Peru should not be lost sight of. They lie in the direct line of navigation between the ports of Peru and the Ecuador, so that vessels sailing from Callao for Payta or Guayaquil rarely miss making the Lobos islands. Any one, therefore, the least conversant with the geography of the Pacific ocean must have known that the islands were Peruvian; and I have always thought that Captain Jewett, when he addressed the letter to Mr. Webster, on the 2d June, 1852, was fully aware that the Lobos were Peruvian property. His letter is so worded as to convince me that, under the pretence of seeking for information, his real intention was to lead the Secretary of State to express an opinion which could be afterwards turned against the government.

Captain Jewett says that, having recently returned from the Pacific, where with other shipmasters he "should have proceeded to the islands of Lobos, adjacent to the coast of South America," &c.

Had he said "adjacent to the coast of *Peru*," the Secretary would probably have examined more closely into the matter before returning an answer. But whether Messrs. Benson and Jewett were ignorant or not of the fact that the Lobos have formed part of the Peruvian territories from time immemorial, it is clear that the vessels sent there were engaged in an unlawful trade. And if they were led into it by the declaration of the Secretary of State that their enterprise would be protected by the Pacific squadron, their claim, if they have any, is against the government of the United States and not against Peru.

With respect to the fitting out of the bark "*Sarah Chase*," with materials and laborers necessary for the founding and sustaining a colony for two years on the Lobos, for the purpose of loading guano, it is to be observed that the vessel's whole cargo, landed at Callao, according to the inventory deposited in the legation, amounted only to \$9,837 25, including four cannon and the other arms and ammunition she had on board.

Of the agents mentioned by Mr. Benson as having been employed by him, only John O. Calebs came to Callao and Lima. Captain Jewett, I have reason to believe, never came to the Pacific after his pretended discovery of an unknown guano island. Mr. Howe committed suicide; and the vessel which was to "duplicate the bill of lading of the *Sarah Chase*" never came to the islands or to Callao. A number of the men sent out on board the "*Sarah Chase*" deserted at the island of Juan Fernandez, as I was told by Captain Calebs.

With these proceedings, the preparations of Mr. Howe at the Sandwich Islands, or with the alleged contract made by Mr. George W. Billings, to deliver one hundred thousand tons of guano in England, neither government has anything to do, except in so far as concerns the four vessels said to have been chartered by Mr. Howe. It was speculation, on the part of Mr. Benson, in property which did not

belong to him; and if not successful he has no one to blame but himself.

I am not informed whether any communications took place between the Secretary of State and Mr. Benson immediately before the arrangement of the 17th of November was entered into at Washington. Vessels, however, were being freighted, at that date, by Messrs. Barreda & Brother, to take guano for account of the Peruvian government, at the rate of \$15 to \$16 per ton, so that the price of \$20, secured to the vessels chartered to take guano from the Lobos, was very properly considered by the Secretary of State as affording a large profit to the charterers.

The agreement between the Secretary of State and the Peruvian minister, Mr. Osma, on the 17th of November, 1852, was as follows:

"That the American vessels which left the ports of the United States *between the 5th of June and 25th of August last*, chartered to load guano at said islands, the Lobos, (of which the undersigned encloses a list as exact as he has been able to form from the information he has obtained,) shall be freighted for account of the government of Peru, to load at the islands of Chinchá, at the rate of twenty hard dollars the ton; the owners or charterers endorsing over the charter parties they may have made to the consignees or agents of Peru, in the United States."

2. "The *instruments or utensils suitable for working guano* that said vessels may have embarked, shall also be taken for account of the government of Peru; the said agents of the government, for the export of guano, paying in Callao to the captains a just price for the same upon previous delivery of the articles."

3. "The vessels which may have been chartered in the ports of the Pacific for the same purpose, in virtue of orders sent from the United States before the 25th of August, and which could not be afterwards revoked, will also be freighted for account of the government of Peru, at the said price of twenty dollars; provided the charter parties be presented and endorsed over to the said agents of Peru, in the United States, before the 1st of January next."

Previously to this arrangement, a list of the vessels chartered by Mr. Benson was furnished the Department of State, (probably by Mr. Osma,) and transmitted to this legation with despatch No. 30, dated August 30, 1852. This list comprised twenty vessels measuring 9,978 tons register and 15,250 tons burthen. Three of the vessels named were the "Golden Era," "J. W. Paige" and "Berlin."

On the 8th of January, 1853, Mr. A. G. Benson made an agreement with Messrs. F. Barreda & Brother, of Baltimore, a copy of which is annexed, (A.) By the first article it was agreed that "A. G. Benson will endorse to F. Barreda & Brother the charter parties of the following vessels named in the list directed by Mr. Jewett to the Department of State, on the 16th of August."

This list included the vessels named in the one transmitted to me with despatch No. 30, above cited, with the exception of the "Golden Era," "J. W. Paige" and "Berlin."

By article 2d it was agreed that the charter parties of the "Cyrus," "Helen Brooks," "Emily Taylor" and "Tartar," should also be

endorsed to the Barredas, by Mr. Benson; "provided the captains may agree to come to Hampton Roads for orders, &c., instead of going to England."

By article 3d it was agreed that the vessels should be dispatched direct from the Chincha islands to the United States, as per charter parties, &c.

By article 4th it was agreed that twenty-four additional vessels should be taken up and loaded by F. Barreda & Brother, under the same conditions, provided that Mr. Benson presents satisfactory proofs of legal force about the legality of the charter parties, (say the declarations under oath from agent, witnesses, of character, as required by F. Barreda & Brother in their letter of the 2d instant.)

By article 5th Barreda & Brother agreed to pay to Mr. Benson "the freight as stipulated per charter parties, and the difference between the rate therein agreed and that of \$20 allowed by the Peruvian minister will be paid to Mr. Benson," with the deduction of 5 per cent. commission on the total amount of freight, at \$20, that Mr. Benson agrees to pay to the said F. Barreda & Brother.

By article 6th it was stipulated that the endorsement should be void and without effect for those charter parties which the captains might, under any pretence, refuse to fulfil or to change the place of loading, and that the agreement was to be considered *binding* on the Barredas "only with reference to and for those vessels whose captains may be willing to carry into effect fully and strictly the charter parties made by A. G. Benson."

By article 7th Mr. Benson reserved the right of claiming the penalties stipulated in the charter parties.

The arrangement made at Washington on the 17th of November, 1852, was confirmed by the Peruvian government on the 18th of December following; and the agreement concluded on the 8th of January, 1853, between Barreda & Brother and A. G. Benson, was approved by it on the 21st of February, 1853.

The Peruvian government, I believe, has in no instance refused to give a cargo of guano to any of the vessels chartered by Mr. Benson, and included in the lists annexed to the agreements referred to, at the rate of twenty dollars a ton; on the contrary, it agreed to admit the "Defiance" to the same terms, although that vessel was not named in either list, and although it was very doubtful whether Mr. Benson had chartered her within the dates specified in the agreement between the two governments, as will be seen by a letter from J. Harrison Smith to William Miles, dated Panama, November 12, 1852, enclosed with despatch No. 39 from the Department of State, dated February 24, 1853.

With respect to the "J. W. Paige" and the "Allioth," it is to be observed that the captains protested against the charters made by Mr. Benson, and refused to proceed to the Chincha islands to load for his account. Barreda & Brother, therefore, gave them a new charter to load for account of the owners, and the question of damages, if any, should be between Mr. Benson and the owners, the Peruvian government being relieved from all responsibility in these and similar cases by the stipulation in the 6th article of the agreement of the 8th of

January, 1853, above referred to. The "Golden Era" appears to be in the same situation, by Mr. Benson's statement, and there are probably some others whose charters have been protested by the captains.

Mr. Benson states that, in the case of the "Tangier," the "Z. D." and the "Arcole," the Peruvian government offers to pay the difference per ton between his charter parties and twenty dollars, deducting, however, five per cent., or one dollar per ton.

The charge of five per cent. on the freight is inserted as a stipulation in every charter party of the vessels contracted by Barreda & Brother to carry guano for the Peruvian government. The charge is made as "commission for doing the ship's business," and they take up no vessel whose owners or captains are unwilling to agree to pay it. The charge is made by the Barredas as consignees of the vessels, and the Peruvian government does not derive any benefit from it. The agents receive a commission from the government for freighting vessels and transacting the guano business, and whatever charges are imposed by the Barredas upon the owners and captains is a matter of private arrangement between them. I have repeatedly represented to the minister of foreign affairs that I considered the charge not authorized by the contract between the government and the agents, but the answer has been invariably that the charge was customary and no higher than that made by other merchants for collecting freight.

In the case of Mr. Benson, it appears to me that he is precluded from making any claim, at least against this government, for the five per cent. charged upon the amount of freight of the vessels chartered by him to go to the Losbos islands, because, in the 5th article of his agreement with Messrs. Barreda & Brother, it is stipulated that the twenty dollars per ton "will be paid to him on the same terms as to the vessels, with the deduction of five per cent. commission on the total amount of freight, at \$20, that Mr. Benson agrees to pay to the said F. Barreda & Co."

According to the terms of this agreement, therefore, Mr. Benson rendered himself liable to the charge of five per cent. commission in favor of the Barredas, not only for the "Tangier," the "Z. D.," and the "Arcole," but for all the others included in the lists annexed to the agreements above mentioned.

The "overbearing and insolence" of the Barredas, of which he complains, are not grounds for putting aside an agreement concluded with due formality, and, although Mr. Benson states that it was "a mere memorandum" of the terms upon which the Barredas were to make an advance to him of fifty thousand dollars yet it was not only signed by F. Barreda & Brother, but transmitted by them to the Peruvian government for approval.

It appears, from the statements of R. W. Trundy, and J. C. Jewett and others, that Messrs. Barreda and Brother had, at some time, offered to Mr. Benson an advance of fifty thousand dollars, and their refusal afterwards to fulfil that promise is considered by him as sufficient grounds to annul the agreement of the 8th of January, and to claim damages of the Peruvian government. The offer, Mr. Benson says, was made to him as an inducement to sign the agreement. If so, it

is singular that the inducement, or consideration, to enter into a contract in which interests of such importance were involved should not have been particularly mentioned. Such is not the case; and as the Peruvian government ratified the agreement of the 8th of January, in the terms in which it was submitted for approval, and did not, at that time, have any notice of offer of the fifty thousand dollars said to have been made by its agents to Mr. Benson, it cannot, in my opinion, be made liable for the failure on the part of the Barredas to make the advance. Moreover, in the contract between the government and the Barredas, as agents for the sale of guano, there is no authorization for them to make advances in its name, or on its account. Consequently, if the Barredas had agreed to give that sum as a consideration to sign, they would have exceeded their powers, and the consent of the government would have been necessary to its validity. The offer, therefore, must be looked upon as a private arrangement between the Barredas and Mr. Benson, in nowise binding on the Peruvian government, and to them he must look for damages for its non-fulfilment.

In his letter to you of the 15th of November, Mr. Benson brings forward the case of the "Sarah Chase" as a palpable breach, by Peru, of the arrangement between the two governments of the 17th of November, 1852. An examination into the facts will, I think, convince you, sir, that Mr. Benson has little reason to complain.

By the second article of the arrangement, it was provided that the "*instruments or utensils suitable for working guano*," brought out by the vessels sent to load at the Lobos, should be taken by the Peruvian government, and be paid for in Callao to the captains upon previous delivery of the articles.

Upon the arrival of the "Sarah Chase" at Callao the agent of Mr. Benson claimed that the Peruvian government should take for its account the cargo of that vessel comprised in the list, a copy of which is annexed, (B.) This the government at first declined to do, upon the ground that but few of the articles could be considered as *instruments for working guano*. And, in fact, a reference to the invoice will show that, with the exception of the bags, shoots, shovels, and some others, the greater part of the articles brought by the "Sarah Chase" could not be justly classed under that head. The government, however, finally agreed to receive them for its account to avoid any trouble or question upon the subject. The adjustment of this matter certainly caused some delay, especially as the agent of Mr. Benson was unwilling that the vessel should proceed to the Chincha islands until some arrangement should be made, and the carronades, &c., should be landed.

The difference of \$1,170 45 in the amount claimed as the value of the articles, according to the appraisement made by Velasquez and Lyons and John Bryce, ship chandlers at Callao, viz: \$9,837 25, and the amount of \$8,666 80 paid by the government, arises from a discrepancy between the invoice of the articles stated by Mr. Cables, the agent of Mr. Benson, as having been deposited by him in the custom-house at Callao, and the list of the same, certified by the officers of that establishment. The Peruvian government grounds its refusal

to pay the balance claimed by Mr. Benson upon this discrepancy, and having no other document in my possession than the invoice or list presented by his agent, I have not as yet been able to come to a settlement with the minister of foreign affairs.

From the manner in which the business, or speculation, of taking guano from the Lobos islands was entered upon, and subsequently carried on by Mr. Benson, led me early to suspect that he would ultimately prefer a claim either against Peru or the United States for losses incurred in chartering the vessels, or in preparations to obtain the manure. Indeed, as soon as it was ascertained that the government of the United States would not protect the vessels in loading there, he declared that he would be subjected to heavy losses. This assertion continued, notwithstanding the arrangement made by the Secretary of State with the Peruvian minister at Washington, by which he was to receive twenty dollars the ton on the cargoes of vessels that he had chartered at from thirteen to seventeen dollars the ton, with the exception of the "Sarah Chase," the "Tartar," and the "Emily Taylor," which two last have not arrived at Callao, that I am aware of.

Taking, therefore, into consideration that the average rate of the charters was about sixteen dollars, and that the expenses of navigating the vessels were borne by their owners, it results that Mr. Benson should have gained on the 59,556 tons burden of the vessels, (admitting his three lists to be correct,) about two hundred and forty thousand dollars, less the commission of five per cent. charged by Barreda & Brother, and other incidental expenses of trivial amount.

This is apparently the real state of the case and it must be admitted that the enterprise was very successful.

Even admitting that the sixty-five vessels mentioned in the three lists presented by Mr. Benson (an aggregated statement of which is annexed, C.) were chartered by him, and that all of them had arrived at the Chincha islands, and were entitled to be loaded with guano by the Peruvian agents on freight for his account at the rate of twenty dollars a ton; still his claim, arising out of the difficulties in coming to a settlement with the house of the agency after their arrival in the United States, could never have amounted to two hundred and forty-nine thousand three hundred and ninety-five dollars and twenty-five cents, as demanded by him in his letter to the Secretary of State of the 15th of November last, that being, in fact, the sum total of the difference, according to Mr. Benson's calculation, of the rate at which his vessels were chartered, and the twenty dollars agreed to be paid by Peru, which would be equivalent to asserting that the agents of the Peruvian government had not paid a dollar on account of the freight at the higher rate. From his own showing, therefore, the claim under consideration is incorrect in amount as I believe it to be in principle. Examining into the lists of vessels represented by Mr. Benson as having been originally chartered by him for the Lobos islands, it is somewhat singular that the "Albus," and the sixteen other vessels last named, should not have been included in either the arrangement between the two governments or the contract with the Barredas; or that, to the best of my recollection, none of them, with

the exception of the "Defiance," should have been mentioned to me by Mr. Calebs as having been chartered by Mr. Benson. In fact, at the request of Mr. Calebs, I represented to the minister of foreign affairs the propriety of permitting him to substitute, for account of Mr. Benson, the "Albus," 975 tons burden, for the "Emily Taylor" and "Tartar," which measured together 1,150 tons carrying capacity, which, I believe, was granted. If, then, the "Albus" had been chartered *bona fide* by Mr. Benson, why was there any necessity for the proposed substitution? The whole business of chartering the vessels seems to have been transacted in a very irregular manner.

Sufficient has been said to show that the claim instituted by Mr. Benson does not rest upon just or reasonable grounds. I do not think that he has any against the Peruvian government, unless for the \$1,175 45, balance of the value of the cargo of the "Sarah Chase," provided that it can be shown that the certificate of the custom-house was erroneous, and perhaps for a small amount for demurrage. He may possibly have been wronged by the Barredas not complying with their verbal agreement to make him an advance of fifty thousand dollars. If so, he has his remedy at law, and should, in my opinion, be referred to the courts of justice for redress. He should not be permitted to open, indirectly, the vexatious question of the Lobos islands.

I have the honor to be, sir, your obedient servant,

J. RANDOLPH CLAY.

Hon. WILLIAM L. MARCY,
Secretary of State.

(B.)

Memorandum of sundries shipped on board barque Sarah Chase, Osgood master, Calebs supercargo, consisting of materials and men for Lobos islands, to be used for loading vessels with guano and articles of subsistence.

- 50 barrels extra flour, (Columbia mills.)
- 93 barrels mess beef.
- 1 half barrel mess beef.
- 51 barrels prime and mess pork.
- 10 barrels rump pork.
- 22 hogsheads Pittson and Liverpool coal.
- 9 tons Pittson and Liverpool coal in bulk.
- 1 patent iron ventilator and fixtures.
- 1 Wood's patent camboose.
- 4 iron carronades, carriages and fixtures.
- 1 chest, containing 36 muskets, 12 cutlasses.
- 4 boxes canister shot, 1,050 lbs.
- 200 round shot, 1,500 lbs.
- 1 magazine lined with lead.
- 1 metal magazine.
- 200 ball cartridges.

- 300 flannel cartridges.
- 200 flannel cartridges extra.
- 15 kegs cannon and musket powder.
- 1 box flints for muskets.
- 85 white oak water, 13,624 gallons.
- 12,770 gallons of water.
- 2 hogsheads coarse salt.
- 1 dozen steel cotton hooks.
- 1 coil lashing rope.
- 24 double and single blocks.
- 1 large patent fish net.
- 1 patent cast net.
- 414 spruce plank and boards.
- 120 scantling.
- 293 feet pine timber.
- 73 white boards.
- 138 feet white boards.
- 1 set brass hinges and screws.
- 1 brass neck bolt, 4 eye bolts.
- 1 slop chest, containing 24 pilot cloth pants, 24 blue flannel shirts, 60 dungaree pants, 60 dungaree frocks, 6 large oil jackets, 12 large oil pants.
- 2,000 gunny bags.
- 1,989 gunny bags.
- 1 long boat, 16 feet.
- 1 long boat, 19 feet.
- 1 long boat, 15 feet.
- 1 long boat, 19½ feet.
- 1 launch boat, 22 feet.
- 1 launch boat, 22½ feet.
- A lot of oak for rails.
- 2 pair rudder irons.
- 13 barrels New Orleans molasses.
- 2 barrels brown sugar.
- 11 bags coffee.
- 2 casks smoked hams.
- 4 half barrels smoked mackerel.
- 5 barrels dried meal.
- 1 tierce rice.
- 4 whiskey barrels.
- 1 hogshead onions.
- 1 chest boots and shoes.
- 24 men's boots, 36 men's brogans.
- 1 box, containing bake pans, tea kettle, skimmers, frying pans, camp kettles.
- 22 rum hogsheads.
- 10 barrels pilot bread.
- 39 barrels fine navy bread.
- 39 barrels pilot bread.
- 22 rum casks.
- 45 flour barrels.

- 10 whiskey barrels.
- 1 chest tools, containing, viz: 12 pick axes, 3 hand saws, 1 broad axe, 6 wood saws, 2 bench axes, 2 wood saws, 3 hammers, 1 rivet hammer, 2 augers, 1 screw driver, 1 set chisels, 2 broad chisels, 2 punches, 2 chisels, 2 mallets, 1 set gimlets, 4 gimlets, 1 draw shave, 1 set files, 1 set flat rasps, 1 set flat files, 1 bit stock and set of bits.
- 1 dozen axe handles.
- 2 dozen shovel and 2 dozen pick handles.
- 1 set caulking irons.
- 87 finished oars, 16, 17, 15, 14, 12 feet.
- 1 long boat anchor.
- 3 packages nails.
- 1 package wrought spikes.
- 5 barrels vinegar.
- 4 chests tea.
- 1 cask sperm oil.
- 5 casks raisins.
- 1 barrel dried apples.
- 4 barrels peas and beans.
- 1 half barrel peas and beans.
- 2 boxes soap.
- 4 half barrels pickles.
- 5 half barrels sour krout.
- 2 half barrels pickled tongues.
- 2 half barrels pickled tripe.
- 8 kegs lard.
- 1 bbl. cheese in salt.
- 1 cask butter in salt.
- 2 boxes Dutch cheese.
- 1 box macaroni.
- 1 half bbl. sugar.
- 1 keg saleratus.
- 1 box preserved meats.
- 1 box sweet oil.
- 10 barrels potatoes.
- 1 box castile soap.
- 1 box containing catsup, pepper sauce, mustard, assorted herbs, spices, ginger, celery seed, table salt, cayenne pepper, bottles curry.
- 1 box containing ball wicking, flat wicking, bath bricks.
- 1 box herrings.
- 5 coils rope.
- 1 barrel sewing twine.
- 1 bag bagging twine.
- 1 roll lead.
- 40 fishing lines.
- 1 barrel tar.
- 1 barrel pitch.
- 7 dozens sail needles.
- 12 deck buckets.

- 6 mess kids.
- 6 hand spikes.
- 2 water pumps.
- 12 hickory brooms.
- 2 dozen bagging needles.
- 1 dozen sail hooks.
- 1 hand lead.
- 6,000 iron tacks.
- 2 brass signal lanterns.
- 1 American ensign.
- 1 boatswain's chest, containing grains, shark hooks, crowbars, marline spikes, hand cuffs, drill for blasting, sewing palm, steel yards, staples, brass wire, harpoon.
- 1 ball oakum.
- 1 keg beeswax.
- A lot of tin ware consisting, for 100 men, lamps, small lamps, cook lantern, lamp feeders, tin plates, coffee pots, set of measures, wash basins, tunnels.
- A lot of crockery, plates, small plates, mugs, castors, tumblers, sets knives and forks, carving knife and fork, forks, table spoons, tea spoons, ladles, cook spoons, tormentors.
- 1 piece of crash cloth.
- 6 powder flasks.
- 2 powder horns.
- 2 bags shot, 50 lbs.
- 1 coil hemp rope.
- Hooks and thimbles, weight 74 lbs.
- 1 grindstone.
- 1 pitch kettle.
- 1 coil fusee, for blasting.
- 1 cask of lime.
- 1 canister linseed oil.
- 1 keg putty.
- 1 dozen sheath knives.
- 100 rabbits for boats.
- 5 bundles hoop iron.
- 1 wooden water tunnel.
- 1 sieve.
- 1 side sole leather.
- 3 packing boxes.
- 1 keg rum.
- 1 keg brandy.
- 1 bundle flax twine.
- 1 coil old junk.
- 1 sheet sheathing copper.
- 5 live hogs.
- 2 dozen fowls.
- 3 barrels cracked corn.
- 1 box tobacco.
- 1 box medicines for men.
- 3 books of directions and charts.

- 23 bolts of No. 1 pilot duck, 1,287 yards.
- 7 bolts of No. 2 pilot duck, 424 yards.
- 2 bolts of heavy ravens duck, 69 yards.
- 1 barrel twine, 90 lbs.
- 1 English 56-hour chronometer.
- 20 coal barrows.
- 48 cast steel shovels.
- 48 cast steel shovels, round pointed.
- 12 loads oak wood.
- 12 cast steel polished hoes.
- 1 half barrel guano.

The value of the articles contained in this list is \$12,016 22.

A. G. BENSON,
By T. M. BRAINE.

NEW YORK, *August 10, 1852.*

(C.)

List of vessels asserted to have been chartered by A. G. Benson to take guano from the Lobos islands.

Vessels' names.	According to list furnished by Capt. Jewett to Dept. of State.		According to list annexed to Mr. Benson's claim.	
	Register tons.	Tons burden.	Register tons.	Tons burden.
Allioth	329	550	329	594
Matilda	400	750	410	615
Z. D.	312	400	312	468
Berlin	625	900	625	937
St. Peter	437	700	437	656
Manchester	570	900	570	855
Philomela	470	750	470	705
Java	540	900	540	810
Sea King	775	1000	775	1163
Adelaide Metcalf	673	1100	673	1010
Hampden	646	1050	649	969
Tangier	393	600	393	590
Arcole	670	900	670	1005
Margaret	450	700	450	675
J. Q. Adams	660	1100	660	990
Commonwealth	600	1000	642	963
Lone Star	500	750	500	750
Golden Era	445	700	443	664
Sarah Chase	283	300	283	425
J. W. Paigu	200	300	200	300

C—Continued.

Vessels' names.	According to list in agreement with Barreda.		According to list annexed to Mr. Benson's claim.	
	Register tons.	Tons burden.	Register tons.	Tons burden.
Remittance	574	.....	574	861
W. H. Harbeck	872	.....	872	1308
Realm	547	.....	547	820
A. M. Lawrence	500	.....	500	750
Element	450	.....	450	675
Alert	764	.....	764	1146
Olivia	650	.....	650	975
Chimborazo	900	.....	900	1350
Rochambrant	900	.....	900	1350
Emma Lincoln	300	.....	300	450
Muscongus	669	.....	669	1004
Montreal	392	.....	392	588
Paragon	900	.....	900	1350
N. H. Wolf	449	.....	449	674
St. Andrews	288	.....	288	432
B. L. Harrison, or Harriman	645	.....	645	967
Charles Holmes	792	.....	792	1188
Henry Harbeck	398	.....	398	597
Col. Cutts	782	.....	782	1173
Republic	792	.....	792	1188
Elvira Harbeck	349	.....	349	524
Plymouth	425	.....	425	637
Ticonderoga	1072	.....	1072	1608
St. Thomas	714	.....	714	1071
<i>Chartered at the Sandwich islands.</i>				
Cyrus	257	.....	257	385
Helen Brooks	464	.....	464	696
Emily Taylor	387	.....	387	580
Tartar	380	.....	380	570
Albus .....	.....	.....	650	975
Esther May .....	.....	.....	490	735
Defiance .....	.....	.....	1690	2535
Northern Crown .....	.....	.....	1380	2070
Robena .....	.....	.....	750	1125
Bolivia .....	.....	.....	1650	2475
Zenobia .....	.....	.....	610	915
Sacsusa .....	.....	.....	400	600
Helen Frances .....	.....	.....	340	510
Albatross .....	.....	.....	900	1350
Golden Age .....	.....	.....	300	450
W. Frothingham .....	.....	.....	840	1260
Glance .....	.....	.....	600	900
Ascutra .....	.....	.....	490	735
Fides .....	.....	.....	700	1050
Sylphide .....	.....	.....	374	560
Duchesse d'Orléans .....	.....	.....	900	1350

Mr. Hunter to Mr. Clay.

[Extract.]

[No. 18.]

DEPARTMENT OF STATE,
Washington, August 26, 1854.

SIR: Your despatches to No. 214, inclusive, have been received; and while acknowledging the varied and important information derived from all your communications, the department desires to express particularly its appreciation of your careful analysis of Mr. A. G. Benson's claim, which, under the scrutiny you have been enabled to bestow upon it, seems entirely divested of the importance sought to be imparted to it by the claimant.

* * * * *

I am, sir, respectfully, your obedient servant,

W. HUNTER,
Acting Secretary.

JOHN RANDOLPH CLAY, Esq., *dec., dec., &c.*

Mr. Clay to Mr. Morcy.

[Extract.]

[No. 227.]

LEGATION OF THE UNITED STATES,
Lima, October 24, 1854.

SIR: In despatch No. 205, dated June 1, 1854, I entered into a statement to prove that the claim preferred by Mr. A. G. Benson against the Peruvian government, for damages arising out of an alleged breach of the arrangement entered into at Washington with regard to the vessels chartered by him to take guano from the islands of Lobos, was entirely without foundation. Further examination has only served to convince me that the Peruvian government has acted most liberally towards him, and has even permitted several vessels to load with guano under his charter parties, which might very well have been disputed.

I had collected the information necessary to prepare a table, showing that a number of the ships mentioned in the list, annexed to Mr. Benson's letter to the Secretary of State, dated November 15, 1853, had either not arrived at Callao or had gone home on charter parties previously made with the house of F. Barreda & Brother, the agents for the sale of guano in the United States; that in some instances charter parties were received from A. G. Benson at ports in the Pacific, or after their arrival at Callao, by captains of vessels which had been regularly chartered in the United States to others for San Francisco and Callao, thereby confirming what had been told me by creditable persons, that Mr. Benson, soon after he resolved on the Lobos island speculation, had sent a number of charter parties to different

places on this ocean, already filled up with the names of the vessels and captains, the amount of freight, and the Lobos islands as their destination, running the risk of their being accepted by the captains. Other facts, moreover, had been communicated to me, tending to show that Mr. Benson's and Captain Jewett's proceedings in the Lobos island scheme were, to say the least, irregular. I had gone thus far, when I was informed by Don Felipe Barrera, the agent of the Peruvian government in Lima, that the firm of Barrera & Brother, in the United States, had arranged the matters in dispute with Mr. Benson to the satisfaction of all parties. It is therefore unnecessary for me, at present, to forward the statement I was preparing for the department.

I think Mr. Benson acted wisely, if he has come to an arrangement, for he could not have substantiated any claim against the Peruvian government.

* * * * *

I have the honor to be, sir, your obedient servant,
J. RANDOLPH CLAY.

Hon. WILLIAM L. MARCY,
Secretary of State.

Captain Jewett to the Secretary of State.

WASHINGTON, August 16, 1852.

SIR: Enclosed with this, I take the liberty to present the following papers, relating to my operations, in connexion with others, in procuring guano from the Lobos islands, situated in the Pacific ocean, adjacent to the coast of Peru, viz: No. 1 is a copy of my letter asking information from the honorable Secretary of State with regard to taking guano from those islands. No. 2 is a list of vessels sent by myself, in connexion with my friends, to load at those islands with this article, which is incomplete, for reasons hereinafter explained. No. 3 is a copy of my instructions to Captain Calebs, of the "Sarah Chase," despatched from New York with men, implements for loading all these vessels, stores for the subsistence of the laborers, and arms. No. 4 is a memorandum from an agreement made with A. B. Howe, of the Sandwich islands, for the sending to Lobos islands one hundred laborers, stores for their subsistence, and implements for loading all these, and arms. No. 5 is a list of stores for subsistence, implements for the loading, and other requisite articles for this business, as shipped per "Sarah Chase." The same list to be duplicated by Mr. Howe, by agreement above referred to from the Sandwich islands. No. 6 is a copy of the charter parties under which vessels I am interested in with friends are chartered to load. No. 7, memorandum of dates of various temporary occupancies by different nations of the Lobos islands previous to 1830.

List No. 2 is incomplete, as noticed, an agent having been despatched into the Pacific, via Panama, in July last, to charter vessels in those waters to load guano at the Lobos islands. The number of which, and the names, are as yet of such unknown. An arrangement having also been entered into by us for the sale of a large quantity of guano to be delivered with our boats and our laborers to vessels sent therefor to these named islands, for which we are paid a stipulated sum per ton, delivered on board. For both these reasons, it is not in my power to give a full list, or to attempt to state even the number of vessels, though such as are now known are given, but they probably are but a small number of the whole.

I would respectfully state, having engaged in this business upon the information given in reply to my inquiry therefor to the honorable Secretary of State, and from the further information received from the honorable Secretary of the Navy, on a personal application, that orders had been issued from the department on or about the 8th of June last to the commodore of the Pacific squadron to give full protection to vessels of our flag engaged in this trade, but recently seeing in the public papers a statement that the government of Peru had taken armed possession of these Lobos islands, threatening rough treatment to persons, and confiscation of property, of all engaged in this trade, I took the liberty to seek the honorable Secretary of State and the President to represent the extent of my own interests as well as the large interests of our citizens engaged therein, and further to say that American vessels, to the number of thirty, and over four hundred of our countrymen, are soon to be at these Lobos islands engaged in this trade, and that on the fifth day of September next I shall leave New York for the Lobos islands via Panama to load such vessels as I may be interested in, and also to perfect the delivery and shipment with our boats and men of the guano sold to be thus laden there by us in vessels sent therefor. No information being given me here from the Department of State to the contrary, I am happy to leave this country with the full assurance of protection in property and person from our government, and shall have the pleasure to communicate the same assurances to all my countrymen I may find engaged in those distant regions in this trade.

In conclusion, may I be allowed to add that the barque Sarah Chase, which sailed from New York with the stores of subsistence, &c., &c., was armed previously to sailing. The captain directed to resist, so far forth as his means would allow, any interruptions or attempted interferences with his business. A certified copy of the Hon. Secretary of State's letter, communicating the rights and privileges of our citizens, was given to him as guarantee proof of his right of resistance in case of molestation; but the President must be aware of the inefficiency of such protection any length of time after arrival at those islands, and on account of the rumored threats of the Peruvian government above referred to. I have humbly to ask, in behalf of those of our countrymen who are engaged in this trade, and for myself, that a continued armed force of the United States be kept up at the Lobos islands for the protection of all—the value of the commerce, and the number of

our citizens engaged in this trade, as herein set forth, demanding the same.

I have the honor to be, with respect, your obedient servant,
JAMES C. JEWETT.

Hon. SECRETARY OF STATE *of the United States.*

List of vessels to load at the Lobos islands.

Ship Lone Star, 500 tons register, 750 burden, sailed July 2, 1852.

Ship Java, 540 tons register, 900 burden, sailed August 9, 1852.

Ship Matilda, 400 tons register, 750 burden, sailed June 19, 1852.

Ship Manchester, 570 tons register, 900 burden, sailed August, 1852.

Ship St. Peter, 437 tons register, 700 burden, sailed August, 11, 1852.

Ship Arcole, 670 tons register, 900 burden, sailed August, 1852.

Ship Sea King, 775 tons register, 1,000 burden, sailed August 11, 1852.

Ship Berlin, 625 tons register, 900 burden, sailed August, 1852.

Ship Adeline Metcalf, 673 tons register, 1,100 burden, sailed August, 1852.

Ship Commonwealth, 600 tons register, 1,000 burden, sailed August, 1852.

Ship John Q. Adams, 660 tons register, 1,100 burden, sailed May 1, 1852.

Ship Hampden, 646 tons register, 1,050 burden, sailed July 22, 1852.

Barque Tangier, 393 tons register, 600 burden, sailed July 23, 1852.

Barque Philomela, 470 tons register, 750 burden, sailed August 2, 1852.

Barque Sarah Chase, 283 tons register, 300 burden, sailed July 23, 1852.

Barque Allioth, 329 tons register, 550 burden, sailed May 29, 1852.

Barque J. W. Page, 200 tons register, 300 burden, sailed April 3, 1852.

Barque Z. D., 312 tons register, 400 burden, sailed June 15, 1852.

Barque Golden Era, 445 tons register, 600 burden, sailed March 26, 1852.

Ship Margaret, 450 tons register, 700 burden, August 12, 1852.

The above vessels are for Hampton Roads for orders, and include no vessels chartered by the agent sent into the Pacific; the names and numbers of which are as yet to me unknown.

JAS. C. JEWETT.

NEW YORK, *July 22, 1852.*

DEAR SIR: You will proceed on board the barque *Sarah Chase*, under charge of Captain Osgood, as supercargo, and cause the following instructions to be carried out: You will direct Captain Osgood to proceed with all possible despatch direct to the islands of Lobos de Afuera, situated in the Pacific ocean, in or near latitude $6^{\circ} 56'$ south, longitude $80^{\circ} 45'$ west, adjacent to the northern part of Peru. You will there report yourself and the vessel for further orders and instructions to the undersigned, or, in case of absence, to Mr. A. B. Howe there, acting agent for parties interested, who will direct your future proceedings. Should you not find either the undersigned or Mr. Howe at these islands, you will proceed at once to take possession of all available loading places in both bays, rig your shoots, and make every other preparation necessary to load the vessels chartered for cargoes with guano from these islands, agreeable to each one of their charter parties, as they may arrive, using the boats and the men you have on board as you may think best for the charterers. You will understand, each vessel chartered for cargoes of guano to load at these islands is to use, in loading, either her own men or her own boats, both or either, if you require them, to collect the cargoes and to boat the same and to load the same on board of their respective vessels, as you will see it is so expressed in the charter parties of each vessel. You will select, in loading, the best guano to be found upon these islands, and as similar as may be to the sample you have on board in a half barrel, digging down and not taking the surface alone. In case of molestation by any, you will protect yourself as far as lies in your power with the force you have under your charge. Should you fall in with an American man-of-war in the Pacific or near these islands, you will proceed on board and state to the commanding officer thereof your place of destination and your business, and request his protection from molestation from any foreign interference, showing him the enclosed copy of a letter from the honorable Secretary of State of the United States, and these instructions also. Any resistance offered by you to parties interfering with your business and your rights must be done with the flag of your country flying upon your vessel. You will keep the barque *Sarah Chase* so long at these islands as you may require her, and when you think you can despatch her, you will load her also with guano, and send her to New York. As each cargo is loaded you will despatch the vessels with the same, as they are destined by charter party, to their respective places or ports of destination: those chartered for the United States to the Chesapeake bay for orders; those that are for Falmouth, England, to that port for orders; and those for Liverpool to that port; forwarding two sets of bills of lading of the estimated number of tons on board each ship or vessel, by different sources, filled up with the words inserted "agreeable to charter party" in each, and consigned to A. G. Benson, of New York. You will have four canvass horses, or shoots, made, for loading the guano into the vessels, from the duck on board, to be each one about ninety feet long, with large mouths to each, the bodies of the same to be made

four square each side the entire width of the duck. The boats you will have put in order on your passage out, and the four smallest ones deepened, by wash-boards around each one, as deep as you can make them to be strong for the uses they will be required for.

You will not make any harbor this side of Cape Horn, unless by necessity; and if unable to have your water-casks filled during the voyage with rain water caught on board, you will have the vessel stop at Juan Fernandez, and have all the casks filled up, using every despatch whilst there, so that the vessel may not be detained one hour longer than necessary. Every despatch is required throughout all, in order to insure success to the business you are employed here to do. You are to receive seventy-five dollars per month for your services during your absence, and are to remain so long as you may be required. You will write every opportunity, and inform Mr. A. G. Benson here of your proceedings in full.

Wishing you a pleasant voyage, and an easy fulfilment of your business, I am, truly, your obedint servant,

JAMES C. JEWETT.

Captain JOHN O. CALEBS.

MEM.—This vessel mounts four nine-pound cannons; has a crew of forty men, with small arms, cutlasses, &c., sufficient to arm all on board; has a large quantity of canister and round shot, powder, &c., &c.; is two hundred and eighty-three tons register.

JAMES C. JEWETT.

Memorandum from an agreement made and entered into with A. B. Howe, of Honolulu, Hawaiian islands, on the 3d day of July, 1852, viz:

“Whereas the party of the first part has obtained authority from the government of the United States of America to load vessels at the Lobos islands in the Pacific ocean, and also orders from the Navy Department to fully protect said vessels; and whereas the party of the second part has engaged to embark, on or before the 20th instant, direct for the Hawaiian islands, *via* Panama and San Francisco, and as soon as possible after his arrival there, to engage a vessel and employ one hundred men, and send them to said islands, engaged to work there, either on board vessels, on shore, or in boats, for the period of one or two years, as may be directed by the party of the first part or his agent; and whereas the party of the second part has agreed to furnish provisions for the said vessel, and the said laborers before mentioned, and such other necessary materials and implements as may be required to load vessels with guano.”

And the said Howe did further agree, for a valuable consideration, to charter all vessels to be had to load guano at the Lobos islands, at a freight not exceeding sixteen dollars per ton, for Hampton Roads for orders.

In witness whereof, the parties herein named, signed, sealed, and

delivered their agreement, interchangeably, on the beforementioned 3d of July, A. D. 1852.

List of stores for subsistence, implements for loading, materials, and men, sent per Sarah Chase, and required, as per agreement, to be sent by A. B. Howe from the Sandwich islands, in like quantities and qualities.

96 shovels,	3 barrels beans and apples,
12 hoes,	3 boxes soap,
12 pick-axes,	9 barrels pickels,
5 wood-saws,	2 casks hams,
9 wood-axes,	13 casks and barrels of tongues,
20 coal-barrows,	tripe, lard, and butter,
155 barrels beef and pork,	1 box maccaroni,
25 hogsheads coal,	1 barrel refined sugar,
12 tons coal,	1 box spices,
1 ventilator,	10 cases peppers—Cayeene,
1 camboose and fixtures,	Salætatus, soap,
4 large long boats,	Preserved meats, catsup,
2 launches,	Sweet oil, mustard,
2 fish nets,	Herbs, celery seed,
30 bushels salt,	100 barrels potatoes,
4 tierces rice,	50 barrels onions,
1 medicine chest,	1 case matches,
12 powder flasks,	1 case of lamp-wicks,
50 pounds assorted shot,	5 casks vinegar,
4 9-pound carronades,	4 chests tea,
800 rounds of canister and other	2 kegs rum and brandy,
shot,	5 doz. axe and shovel handles,
1,000 cartridges,	1 kedje anchor,
2 magazines,	2 hand leads and lines,
36 muskets,	81 fish lines,
700 musket cartridges,	4½ gross of hooks,
1 case flints,	1 barrel tar and brushes,
20 pounds sheet lead,	1 completed tool chest,
15 kegs powder,	12 mess kids,
24 cutlasses,	12 deck buckets,
Wads, &c., &c.,	2 dozen handspikes,
1 American ensign,	2 water pumps,
7 coils rope, assorted,	12 brooms,
44 pounds hooks and thimbles,	2 harpoons—Grams',
Grindstone and fixtures,	2 boat hooks—crowbars,
Pitch kettle and 1 bbl. pitch,	2 marline spikes—caulking,
85 hhds. and 13,000 gallons	6 irons—caulking mallets,
water,	10 pair hand-cuffs,
1 slop chest contain'g clothes,	1 large blasting drill,
800 boards, joist and plank,	1 pair steelyards,

1 dozen cotton hooks,
 1 bll. sewing twine,
 32 bolts No. 1 canvass,
 10 pounds flax twine,
 1 dozen sail hooks,
 12 dozen sail needles,
 1 barrel paint oil,
 1 barrel putty,
 3 water funnels,
 12 sheath knives,
 A lot of hoop and boat rivets,
 300 pounds assorted nails and
 spikes—cut, &c.,
 Lot of screws, copper rivets,
 ring-bolts and eye-bolts,
 3 casks sugar,
 12 casks molasses,
 17 bags coffee,
 3 barrels peas,
 10 cords wood,
 30 casks (16,000 pounds) navy
 and pilot bread,
 50 barrels flour,
 50 barrels bread,
 5 barrels meal,
 5 casks raisins,
 10 gallons oil,
 4 half barrels mackerel,

Iron staples and wire,
 2 brass and 2 tin lanterns,
 1 box beeswax,
 2 bales oakum,
 12 lamps and 2 feeders,
 1 case containing plates, dishes,
 tumblers, knives, forks,
 &c., &c., for complement
 of men.
 16 large bake pans,
 2 coffee mills,
 4 coffee pots,
 90 13, 14, 15, and 16-foot oars,
 1 cask lime,
 A lot of hemp rigging,
 4 large spars,
 4 small spars,
 5 bundles hoop iron,
 4 camp kettles,
 A lot of leather,
 1 box tobacco,
 1 56-hour chronometer,
 2,000 gunny bags,
 2,000 large bags,
 1 box of boots,
 1 box shoes,
 *100 laborers.

In 1615. First account of the Lobos islands, visited then and described by the Dutch Admiral Joris Spilbergen in his voyages.

In 1684 they were frequented and used by the buccaneers, then plundering the Spanish settlements upon the coasts adjacent. A good description is given of them in Dempsier's Narrative.

In 1790 they were the rendezvous of Admiral Woodes Rogers, who made them a station for his ships while cruising against the Spanish.

From 1800 to 1830, they were visited, used, and occupied for short periods during this interval of time by American sealers; also visited by whale ships for supplies of eggs, and during this period, in 1823, Captain Morrell visited, occupied, and used them in his business, then in the schooner *Wasp*, of New York. A full description of both he then gave, and afterwards published in 1832; and from 1830 to 1835 they were visited for sealing purposes, and also in depositing goods there, to be smuggled into Peru, they then being a rendezvous for vessels in illicit trade engaged with that country. Persons now residing in this country can furnish these facts last named.

* But 40 sent in this vessel.

Mr. Kennedy to Mr. Webster.

NAVY DEPARTMENT,
August 25, 1852.

SIR: I have the honor to acknowledge the receipt of your communication of the 24th instant, transmitting a copy of a note of the 21st instant, addressed by the Department of State to the chargé d'affaires of Peru, on the subject of the Lobos islands, and also a copy of a letter of the same date, addressed to Mr. J. C. Jewett, upon the same subject, and to state that the President's directions that Commodore McCauley may be instructed to suspend, until further orders, the execution of the order issued by this department on the 16th of June last, and that he also be directed to abstain from aiding or abetting any citizens of the United States who may forcibly resist the execution of the laws of Peru by the authorities of that republic, have been complied with, copy of which instructions is herewith enclosed, as well as a copy of the order to Commodore McCauley of the 16th of June last.

I have the honor to be, with high respect, your obedient servant,
J. P. KENNEDY.

HON. DANIEL WEBSTER,
Secretary of State.

Captain Jewett to President Fillmore.

NEW YORK, September 10, 1852.

SIR: I beg leave again to solicit respectfully and earnestly the protection of the government for my property, embarked in an enterprise, lawful in its commencement, and undertaken under a guaranty, proffered by the government itself.

My letter of the 16th August last informed the President of many of the vessels chartered, and which are now on their way to the islands of Lobos to load with guano.

It has seemed good to the President to withdraw the protection, confiding in which I have acted, and to forbid me to protect my own property. What shall I do? Will the government of my country compel me and my associate to the abandonment upon our part of the enterprise, and thus consign us to hopeless insolvency as a penalty for confiding in the protection of our government freely tendered?

I am persuaded the President will do all in his power to extricate us from the embarrassment into which we have been brought by no fault or imprudence of our own, and enable us to realize those results of our enterprise to which we are fully entitled.

I have the honor to be, respectfully, the President's obedient servant,
JAMES C. JEWETT,

MILLARD FILLMORE,
President of the United States of America.

Mr. Conrad to Captain Jewett.

DEPARTMENT OF STATE,
Washington, September 18, 1852.

SIR: Intelligence has been received at this department to the effect that the vessels which it is understood you have chartered to load with guano at the Lobos islands on your own account may receive freights there, or at the other guano islands, on account of the Peruvian government, or the contractors for the export of that article from Peru.

I am, very respectfully, your obedient servant,
CHARLES M. CONRAD,
Acting Secretary.

J. C. JEWETT, Esq., *New York.*

Mr. Conrad to Messrs. Magoun & Son.

DEPARTMENT OF STATE,
Washington, September 21, 1852.

GENTLEMEN: I have to inform you that intelligence has reached this department to the effect that the Peruvian government is disposed to give freight to those United States vessels which may have proceeded to the Lobos islands, under the impression that they would be protected in taking in cargoes of guano there. This privilege, however, will, it is presumed, be limited to those vessels which may have sailed for those islands between the 5th of June and the 24th of August last.

I am, gentlemen, very respectfully, your obedient servant,
CHARLES M. CONRAD,
Acting Secretary.

MESSRS. MAGOUN & SON, *Boston.*

Captain Jewett to Mr. Conrad.

NEW YORK, *September 22, 1852.*

SIR: I have the honor to acknowledge the receipt of your letter of the 20th instant, in which it is stated that "intelligence has been received at this department to the effect that the vessels which it is understood you have chartered to load with guano at the Lobos islands on your own account may receive freights there, or at the other guano islands, on account of the Peruvian government, or the contractors for the export of that article from Peru," and in answer thereto I beg leave to state that, relying on the assurances of the government of the United States, as contained in the letter from the

State Department of the 5th of June last, that citizens of the United States had a right freely to take guano from the Lobos islands, and the verbal statement made to me personally, by the honorable Secretary of the Navy, on the 9th day of June last, that the government had ordered a force there to protect American vessels which might go there for cargoes of guano, I made arrangements with Mr. A. G. Benson, a merchant of this city, sufficiently extensive to load hundreds of ships at those islands; and in so doing very heavy expenses have been incurred in fitting out two ships with men and materials—one from New York, and the other a duplicate from the Sandwich islands—and in chartering a large number of ships to go to the Lobos islands, which was communicated to your department in my letter of 16th of August last. These expenditures alone, without alluding to other losses which must be manifest to your department, render it entirely impossible for us to accept such an arrangement as would be implied by the intelligence you are so kind as to communicate, without absolute and irretrievable ruin.

It will, therefore, be apparent to your department that the only course left us is to rely on the government of our country to provide that we shall be permitted to load on our own account all the ships which we have chartered for those islands, with the men and means that we have sent out for so doing.

With sentiments of respect, I have the honor to be your obedient servant,

JAMES C. JEWETT.

Hon. C. M. CONRAD,
Acting Secretary of State of the United States.

Messrs. Dana & Co. to President Fillmore.

Boston, September 23, 1852.

The undersigned would respectfully represent that, on the 7th of July last, they had the honor to address the honorable Secretary of the Navy, and inquired of him if American vessels loading guano at the Lobos islands would be protected by the United States ships of war in the Pacific. Under date of the 9th of same month Mr. Graham replied to above in the affirmative.

Subsequently, the orders which Mr. Graham informed us had been given to Commodore McCauley, were reported to be withdrawn; and having been unable to ascertain if the withdrawal of the protection which had been thus previously guaranteed was entire, and referred as well to those ships which might touch at the Lobos islands without attempting to remove the guano as to those which should attempt to load there, and learning from the decrees of the Peruvian government of the 21st of March and 10th of May, 1842, that all vessels which should *approach* or anchor at the islands or places containing guano would be liable to seizure and confiscation, unless they had permission from the Peruvian government to touch at said places or islands, we

again addressed the Navy Department, under date of the 10th instant, asking the honorable Secretary if it was the intention of government to withdraw completely its protection, and permit the seizure of American vessels which should simply touch at the Lobos islands.

To this inquiry Mr. Kennedy replied, under date of the 15th instant, briefly stating that the orders first given to Commodore McCauley had been superseded, but giving us no information on the subject of our query.

The undersigned beg to enclose copies of the correspondence, and to state to his excellency that, after receiving the guarantee of protection above referred to, first given in the letter of July 9th, from the Navy Department, and the same being afterwards confirmed by Mr. Graham in person, in an interview which the senior of our house had with him in Washington, they changed the destination of their ship, the "Michael Angelo," which had been ordered to proceed from San Francisco to China, and instructed the captain of said ship to sail for the Lobos islands and there procure a cargo of guano.

Our ship arrived in San Francisco early in August, would leave early in September, and is now doubtless well on her way to the Lobos islands, where she should arrive early in November.

By the decrees of the Peruvian government previously referred to, our ship will be liable to seizure and confiscation; and as it was on the strength of the guarantee of the government, and our reliance in its good faith, that we ordered our ship there, we would respectfully but earnestly appeal to your excellency to take such measures as not only will avert the danger to which she is exposed, but to enable her captain to procure and load a cargo of guano; for we would state, that though the ship be not seized, yet the expense of procuring utensils and other articles necessary in loading guano have involved a large outlay, and if we are not permitted to procure the guano we shall suffer a serious loss.

It being understood that a special minister from the Peruvian government has lately arrived in this country for the purpose of an understanding with the American government on the subject of the above-mentioned islands, we may be permitted to entertain the hope that your excellency, in view of the claim which this government has made to remove the deposits of guano on the Lobos, and in consideration of the guarantee given to several of its citizens, ourselves among the number, that their ships should be protected, will require of the Peruvian government to abstain from any interference with those ships which, under the above guarantee, have been ordered there, and pending the question of sovereignty of said islands, to allow them to load without molestation.

It is with great reluctance that the undersigned intrude themselves on the attention of the President, but the extent of their interest in this matter renders it their imperative duty to use all honorable means to protect the same; and it is this duty which constrains them to appeal to your excellency, believing that the Executive of the United States, while watchful of the general interests, and desirous of preserving the peace of the country, will not be unmindful of the private

claims of its citizens, nor regard with indifference the non-fulfilment of its guaranties to them.

With assurances of our high consideration, we have the honor to be your most obedient servants,

DANA & CO.

His Excellency, the Hon. MILLARD FILLMORE,
President of the United States.

Messrs Magoun & Son to Mr. Conrad.

Boston, September 24, 1852.

DEAR SIR: We have the pleasure to acknowledge the receipt of your highly esteemed favor of 21st instant, informing us that intelligence had reached the Department of State to the effect that the Peruvian government is disposed to give freights to those United States vessels which may have proceeded to the Lobos Islands under the impression that they would be protected in taking in cargoes of guano there, and we write to ask if, under this arrangement, those vessels of the United States alluded to in your letter will be allowed to load cargoes of guano on ship's account, or whether the masters will be obliged instead of this to accept such rates of freights for their vessels as the Peruvian government may see fit to give.

We do not fully understand the arrangement proposed by the Peruvian government, as the word "freight" is often used in both senses among mercantile men here.

Captain Baker, of our ship "Manlius," had received our letter of instructions of 17th June, and sailed from Acapulco, Mexico, August 10, for the Lobos islands, where he no doubt arrived early the present month, (say about the 10th instant.)

Very respectfully, your most obedient servants,

MAGOUN & SON.

Hon. C. M. CONRAD,

Acting Secretary of State, Washington, D. C.

Mr. Conrad to Messrs. Dana & Co.

DEPARTMENT OF STATE,
Washington, September 25, 1852.

GENTLEMEN: The President has referred to this department your letter to him of the 23d instant, stating that you had ordered your ship Michael Angelo from San Francisco to the Lobos islands for the purpose of loading with guano, and requesting the adoption of such measures as will not only prevent her from being seized by the Peruvian authorities, but also enable her to accomplish the object of her voyage.

In reply, I have to inform you that there is good reason to believe,

from information received at this department, that vessels of the United States which sailed about the time of the *Michael Angelo* will obtain a freight of guano from the Peruvian government, or from the contractors with that government, from either the Lobos or Chincha islands.

I am, gentlemen, very respectfully, your obedient servant,

C. M. CONRAD,

Acting Secretary.

Messrs. DANA & Co., Boston.



Messrs. Dana & Co. to Mr. Webster.

Boston, October 1, 1852.

The undersigned respectfully beg to represent that, on the 7th of July last, they addressed a letter to the Hon. William A. Graham, Secretary of the Navy, wherein they requested to be informed if American vessels loading guano at the Lobos islands would be protected at all hazards by the United States fleet in the Pacific.

To this request the honorable Secretary did them the favor to reply under date of the 9th of same month, informing them "that instructions had been given by the department to Commodore McCauley to protect our citizens resorting to the Lobos islands to procure guano."

This assurance was afterwards confirmed in a personal interview which the senior member of our house had with Mr. Graham.

On the strength of this assurance, the undersigned changed the destination of their ship, the "*Michael Angelo*," and under date of the fourth of August last, instructed her captain not to go to China, as he had previously been ordered, but to proceed from San Francisco with all despatch to the Lobos islands, and there procure a cargo of guano, informing him that the government of the United States had promised to protect American ships loading there.

The ship arrived in San Francisco on the second day of August; her arrival became known here about the seventh of September, at about which date the instructions of the undersigned of the fourth of August, directing the ship to the above named islands, should have been received in San Francisco.

The ship undoubtedly sailed thence early in September, and should reach her destination early in November.

The undersigned beg likewise to represent that by the decrees of Peru of the twenty-fifth of March and tenth of May, 1842, all vessels which may anchor at or *approach* those islands without first obtaining from that government permission so to do are liable to seizure and confiscation; and they would therefore represent that if these decrees are enforced they will suffer great damage; and even if their ship be not seized, yet, if she is prohibited from procuring a cargo there, the undersigned will experience serious loss, by reason of the breaking up of the voyage and of the large outlay of money which they have made in procuring the necessary implements for digging and loading the guano.

The undersigned, however, indulge the hope that the honorable the Secretary of State will require of the Peruvian government to abstain from making any seizures; and at the same time will stipulate that their ship, in common with other American vessels, which, under the authority of the United States government, were ordered there before its guaranty of protection was withdrawn, shall be allowed to procure a full cargo without any impediment on the part of Peru.

The undersigned would state that, as it was on the reliance which they placed on the promised protection of their government that they ordered their ship to the Lobos islands, they consider that they have a right to look to the government for reparation of any damages which they may sustain by reason of the withdrawal of the aforesaid protection, either by the seizure or detention of their ship, or by her being prevented from procuring there a cargo of guano.

As the undersigned have been informed that there has recently arrived in this country a special minister from Peru, they respectfully request that in case the United States government make any arrangements with that of Peru for the protection and loading of the ships which have been despatched to the above named islands, they may receive from the Department of State as early notice of the terms of same as may be compatible with the public interests.

With the assurance of their high consideration for the honorable the Secretary of State, they have the honor to be his most obedient servants,

DANA & CO.

Hon. DANIEL WEBSTER,
Secretary of State.

Messrs. Dana & Co. to Mr. Conrad.

Boston, October 2, 1852.

We had the honor to address yesterday the Hon. Secretary of State, relative to the position in which we, acting under the authority of our government, had placed our ship the "Michael Angelo."

We have now the pleasure to acknowledge the receipt of the communication of the honorable the acting Secretary of State of the 25th ultimo, which has only reached us to-day.

In this communication we are informed "that the Department of State have good reason to believe that vessels of the United States that sailed about the time of the "Michael Angelo" will obtain a freight of guano from the Peruvian government or from the contractors with that government, from either the Lobos or Chinha islands."

This information is so general in its character and so limited in its signification that we can draw from it no satisfactory conclusion; and we would therefore respectfully inquire if the Peruvian government, or the contractors with that government, propose that vessels which, under the authority of the United States government, have been ordered to the Lobos islands, shall be allowed to procure guano there

for the benefit of their owners, or whether the proposition of the Peruvian government or its contractors is to charter or freight the said vessels on their own account?

If the latter be the proposal made, we shall be obliged if you will inform us what rate of freight they propose to allow.

We would state that any ordinary rate of freight would be no compensation for the expenses we have already incurred independent of those which are contingent or are likely to result from the change which we have made in the destination of our ship; and we would moreover represent that if our ship be prevented from procuring a cargo of guano for the benefit of her owners, we consider that we shall have a just claim on the government for any difference which may arise between what we may be obliged to accept as a freight for the ship, and what we might have realized for the cargo of guano which she would have procured, had the protection of government not been withdrawn.

May we be permitted to repeat, what we stated in our communication of yesterday to the honorable the Secretary of State, viz: "that we have entertained and still entertain the hope that the government of the United States will stipulate that American vessels which have been authorized to proceed to the Lobos Islands shall be permitted to procure guano there."

We would also respectfully represent that the time at which our ship should reach her destination is rapidly drawing near, and that it is of great importance to us that some arrangement should soon be effected whereby she may be enabled to procure a cargo.

If, however, the government decide not to renew their protection, and do not deem it practicable to make such stipulations as we have suggested above, we shall be much obliged if the Secretary of State will give us early information of the same; for in case the government continues to maintain its present position on this subject, we may be compelled to accept such terms of freight as the Peruvian government or its contractors may dictate; and if there is no prospect of an early arrangement being made with the government of Peru, we must, in order to avoid unnecessary detention of the "Michael Angelo," send to her captain by the nineteenth of this month instructions how to proceed.

Assuring the honorable the acting Secretary of State of our high regard and consideration, we have the honor to be his most obedient servants,

DANA & CO.

Hon. C. M. CONRAD,

Acting Secretary of State, Washington.

Messrs. Magoun & Son to Mr. Conrad.

Boston, October 7, 1852.

DEAR SIR: We deem it important to advise the department that we have received, per last steamer, a letter from Captain Otis Baker, jr.,

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master of our ship "Manlius," dated Lobos de Afuera, September 12, 1852, copy of which you will please find herewith annexed.

Captain Baker's letter appears to have been written soon after his arrival, and in great haste, probably while the mail steamer was approaching, and does not say what course he should take with the "Manlius," neither does he mention in his letter, as you will perceive, that any agent of the Peruvian government had offered to "give freight" to his vessel.

Very respectfully, your most obedient servants,

MAGOUN & SON.

Hon. C. M. CONRAD,

Acting Secretary of State, Washington, D. C.

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LOBOS DE AFUERA, *September 12, 1852.*

GENTLEMEN: This will inform you that your ship "Manlius" has touched at these islands, as directed, and was immediately ordered away by a Peruvian man-of-war brig lying at this [island]. There is one English barque here loaded, and one American do. loading, and — loaded and sailed, which is all that has called here. I have no time to say more.

Your obedient servant,

O. BAKER, JR.

Messrs. MAGOUN & SON.

This is to certify that the ship "Manlius," of Boston, Captain Baker, has been ordered to weigh and leave immediately.

SAMUEL MOORHOUSE,

Barque Eliza.

JAMES ROBERTSON,

Barque Gardner.

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Messrs. Magoun & Son to Mr. Everett.

Boston, *November 11, 1852.*

SIR: Having our ship "Manlius" at Acapulco in the month of June last, hearing of the favorable opportunity presented for obtaining a cargo of guano at the Lobos islands, and wishing to engage in no enterprise which was not characterized by integrity and honor, we wrote, under date of June 7th, 1852, to the Department of State for information concerning the right of American vessels to load at that place.

An official communication from honorable Daniel Webster, and another from the honorable Secretary of the Navy, in reply to our inquiries, assured us that orders had been issued to the American squadron in the Pacific to afford protection to American vessels while loading at the Lobos islands.

Relying upon this authority and promise of protection, our ship "Manlius," equipped at a heavy cost of men, boats, and implements, in obedience to instructions, reached those islands early in the month of September last, where the expected protection was not found, and, after protracted and expensive delay, was obliged, by the peremptory orders of the Peruvian authorities to leave those waters in ballast, thus occasioning great pecuniary loss to her owners.

Feeling that this loss is owing to no misjudgment of our own, and expecting indemnification, we take the liberty to inquire whether, through any actual or contemplated arrangement between the American and Peruvian governments, the department expects to redeem its promise of protection after such a manner that the "Manlius," or any other ship of ours of equal capacity, shall be allowed to procure a cargo of guano at the Lobos islands on ships account.

Very respectfully, your most obedient servants,

MAGOUN & SON.

Hon. EDWARD EVERETT,
Secretary of State, Washington, D. C.

Mr. Everett to Dana & Co.

DEPARTMENT OF STATE,
Washington, November 19, 1852.

GENTLEMEN: At the request of Mr. Edmund W. Dana, I would inform you that the arrangement concluded between this government and the Peruvian minister relative to American vessels sent to the Lobos islands for guano, would include any vessels ordered on the 4th of August and sailing from San Francisco prior to the 25th of August, provided she is placed at the disposal of the agents of the Peruvian government, in this country, before the 1st of June, 1853.

I remain, gentlemen, respectfully, your obedient servant,

EDWARD EVERETT.

Messrs. DANA & Co., *Boston.*

*Mr. Benson to Mr. Everett.**

NEW YORK, *November 27, 1852.*

SIR: The action of this government in suspending, its orders to protect our shipping while engaged in loading guano at the Lobos islands, and the proclamation of its officers in the Pacific, warning ship-owners against violating the decrees of Peru in regard thereto, have induced many of the ship-owners to abandon their charters; and if this should be the case generally, the honorable Secretary will not fail to perceive how

* NOTE.—A copy of this letter accompanies Mr. Everett's note to Mr. Osma, of December 1, 1852.

very injuriously it would affect my interests. All the expenses have been incurred for laborers, materials, &c., to load fully one hundred thousand tons of shipping, forty thousand tons of which are estimated to be under engagement up to this date. Now, what I desire is, that the Secretary of State will request the Peruvian minister to consent (under the arrangement recently made between the two governments) to liquidate at — tons, per register of ships, which shall be delivered on board vessels chartered by me, and to extend the time for presenting the charter parties for endorsement. Such a settlement, made now, will prevent future differences from occurring between the charterers of the ships and the Peruvian government or its agents, and difficulties to our own government in the settlement of disputes arising therefrom; and as there is no reason to suppose the minister of Peru would object to such a request, I beg leave most respectfully and earnestly to hope that it may be made; and have the honor to remain your most obedient servant

A. G. BENSON.

HON. EDWARD EVERETT,
Secretary of State, Washington.

Mr. Everett to Messrs. Dana & Co.

DEPARTMENT OF STATE,
Washington, December 10, 1852.

GENTLEMEN: I transmit, herewith, a copy of a translation from the note of Mr. J. J. de Osma, minister of Peru, from which you will learn that, prior to the note from this department to him on the subject, Mr. Osma had given orders for the chartering of your ship, the Michael Angelo, for a freight of guano from the Lobos islands.

I am, gentlemen, respectfully, your obedient servant,

EDWARD EVERETT.

Messrs. DANA & Co., *Boston.*

Mr. Everett to Mr. Benson.

DEPARTMENT OF STATE,
Washington, December 10, 1852.

SIR: I transmit to you, herewith, copy of a translation of a note from Mr. J. J. de Osma, minister of Peru, in reply to one from this department, enclosing a copy of your letter of the 27th ultimo, in relation to the freighting of your vessels at the Lobos islands.

Mr. de Osma, you will perceive, declines making any special arrangements in reference to your vessels, without particular instructions from his government, to which he has referred the subject.

I am, sir, your obedient servant,

EDWARD EVERETT.

A. G. BENSON, Esq.

Messrs. Magoun & Son to Mr. Everett.

[Telegraphic.]

Boston, December 11, 1852.

Will you have the kindness to inform us, by telegraph, if the "Manlius" is included in Mr. Osma's list of vessels furnished State Department seventeenth ultimo.

MAGOUN & SON.

Hon. EDWARD EVERETT.

Mr. Everett to Messrs. Magoun & Son.

DEPARTMENT OF STATE,
Washington, December 21, 1852.

GENTLEMEN: It is a source of great regret that the department has been unable until this moment to reply to your telegraphic despatch of the 11th instant, inquiring whether the "Manlius" was included in the list of vessels furnished by Mr. Osma with his note to this department of the 17th ultimo.

By some accident the list to which Mr. Osma referred was lost or mislaid, and it was therefore necessary to obtain a duplicate thereof from the minister of Peru. Mr. Osma was lying ill in New York, and the letter of the department remained necessarily unanswered until Mr. Osma's return to this city.

In a duplicate list of the vessels just received from Mr. Osma the name of the Manlius does not appear.

I am, &c.,

EDWARD EVERETT.

Messrs. MAGOUN & SON.

Mr. Everett to Mr. Benson.

DEPARTMENT OF STATE,
Washington, February 9, 1853.

SIR: Your letter of the 7th instant to the President, enclosing copy of a communication addressed by you to the Peruvian minister, has been referred to this Department, and in relation thereto, I have to inform you that copies of the same have been transmitted to the chargé of the United States at Lima with proper instructions in the premises.

I am, sir, respectfully, your obedient servant,

EDWARD EVERETT.

A. G. BENSON, Esq.,
New York City.

Mr. Benson to Mr. Everett.

NEW YORK, *March 2, 1853.*

SIR: I have the honor to hand you with this duplicates of the papers contained in the package herewith enclosed, and addressed to the honorable J. Randolph Clay, chargé d'affaires at Peru, with the request that you will cause the originals to be forwarded to Mr. Clay, accompanied with such instructions in reference thereto as in your opinion the case requires, and that the others may be placed on file in the Department of State; and have the honor to be your most obedient servant,

A. G. BENSON.

HON. EDWARD EVERETT,
Secretary of State, Washington, D. C.

NEW YORK, *February 21, 1853.*

SIR: Under date of the 4th instant, I took the liberty to address you regarding the difficulties which had arisen under the settlement of the Lobos question, and to invoke your aid in behalf of my agent, Captain John O. Cables, to enable him, in accordance with the true spirit of the arrangement entered into between the two governments on the 17th of November last, to settle with the Peruvian government for implements, utensils, &c., which I had sent out from the United States and the Sandwich Islands to procure guano at the Lobos islands. It was there also stated that vessels engaged by me to load with guano had in some cases been rechartered by the agents of Peru, and requested that all such vessels should be loaded for my account, according to the aforesaid arrangement, at *twenty* silver dollars per ton freight, without regard to their subsequent engagements.

It is not to be supposed that any charters would have been abandoned, or rechartered made, if the government of the United States, on the one hand, had not withdrawn its protection, and Peru, on the other hand, had not threatened confiscation. And the government of the United States having been informed of these circumstances, and being apprehensive that difficulties might arise on account thereof, on the first of December last requested his excellency J. J. de Osma, to liquidate the number of registered tons of shipping which I should have freighted at the Chincha islands under the aforesaid arrangement. The above request was accompanied with a copy of a note from the undersigned, of the 27th of November last, to the Hon. Edward Everett, copy of which is herewith annexed, marked "A," which, it may be proper to state, was first submitted to his excellency the minister of Peru, then in New York, and so modified by his directions as to suit his views, and with the distinct and positive assurance that if the government of the United States would make the request asked for therein he would immediately grant it. This letter was presented by the undersigned in person to the Hon. Edward Everett, in Washing-

ton, on the morning of December 1, 1852, at nine and a half o'clock, and was submitted to the consideration of the cabinet that same day. While this subject was thus under consideration, two circumstances worthy of note occurred, which I beg leave to state: First, that J. Y. de Osma, brother of the minister, called at the State Department to see Mr. Everett to say to him (and in his absence informed Mr. Hunter) that such a letter was to be laid before him, and to beg him not to make the request it contained, as it could not be granted; second, that by the mail of that day the undersigned received a letter from New York, stating that Mr. Osma was very desirous the request should be made, but was afraid the government of the United States could not be induced to ask it. It is supposed, however, the letter above referred to was written and despatched before this extraordinary message was communicated to Mr. Everett, and that its annunciation perplexed and surprised him.

The undersigned returned to New York on the 2d day of December, and on the day following called on his excellency the minister of Peru, who, to the great surprise and mortification of the undersigned, said that inasmuch as he had fulfilled his mission in this respect, and had advised his government of what he had done, upon further reflection he thought it more proper to submit the matter to his government, accompanied with his views in *its favor*; and further, that it was the identical suggestion he had made pending the negotiation, and there could be no doubt of its adoption, as *he would recommend it*. It will, however, appear, by reference to the annexed copies of letters marked "B" and "C," of the 4th and 10th of December last, that if the honorable Secretary of State did not feel that the government of the United States had been trifled with, he was quite sure that Mr. Osma had no intention of making the recommendation above referred to.

I now beg leave to call your attention to the annexed copy of correspondence between the undersigned and his excellency J. J. de Osma, minister of Peru, (mine,) of the 28th ultimo and 7th instant, and (his) of the 5th and 21st instant, marked "D," "E," "F," and "G," and between the undersigned and the government of the United States of the 7th and 9th instant, and marked "H" and "I," which would seem to show that, for reasons not disclosed to the undersigned, the government of the United States did not choose to make any further requests of Mr. Osma, but submitted the whole correspondence to your excellency, with the proper instructions in the premises.

Here it may be proper to state that, from the very beginning of this business till the day its final settlement was announced, the owner of every ship who had chartered, or was negotiating a charter with me, was threatened by the agents or charterers of vessels for Peru in this city either with the seizure of his ship or the loss of his charter; and so industriously and generally was this sentiment circulated in the public prints and elsewhere, that very many ship-owners were deterred from concluding charters with me at all, while many others accepted offers binding on my part, but on theirs only in the

event that it should appear, when the ships had discharged their outward cargoes, I was able to load them according to agreement.

It will not be thought strange, therefore, that after the proclamations of the two governments appeared on the Atlantic and Pacific coasts, that some parties abandoned charters made with me, and entered into others with the agents of Peru, or sought business elsewhere. It is only strange that all of them did not do the same; but how many besides those first referred to may have so done, I am not at present able to state, for the reason that my agent, upon whom I relied for advice on this subject from the north Pacific, Mr. A. B. Howe, (who was interested in the ships chartered there, and who had arrived at the Sandwich Islands, and was preparing to embark his expedition of men, materials, provisions, &c., for the Lobos islands,) was so utterly confounded and overwhelmed with the announcement that the government of the United States had withdrawn its protection that, in a fit of alienation of mind, he committed suicide.

He had forwarded to me the charter parties of the brig "Cyrus," barque "Tartar," ships "Ellen Brooks" and "Emily Taylor;" which vessels he had taken up to transport from the Sandwich Islands his laborers, materials, outfits, &c., (after which they were to load guano,) and had purchased there another vessel to be used as a storeship at the Lobos islands; but his sudden death and the declared unlawfulness of the business induced the captains of the above named chartered vessels to abandon their charters, leaving the storeship, outfits, men, &c., in utter confusion; thus bringing the entire expedition to a dead stand, and subjecting me to great embarrassment and heavy losses.

I may be allowed also further to state that, after having provided the men and means from the Atlantic, and for fear of disaster had duplicated the same from the Pacific, (with double the complement of laborers,) feeling confident that every preparation was complete on my part, and not entertaining the shadow of a doubt but that the government of the United States would fulfil its voluntary assurances, an agent was despatched to England with authority to negotiate a contract for the delivery there of one hundred thousand tons of guano: which contract was completed on my part, as far as I was able, but failed because the government of the United States, after inviting me into such an enterprise, when I was fairly embarked and could not retreat, announced to the world that the business in which I was engaged was unlawful, thereby compelling me to dishonor engagements and pay losses arising solely from a perfect reliance in its promises.

The agreement on the part of Peru to freight at twenty dollars per ton from the Chircha islands the ships which I had chartered, and had made provision to load at the Lobos islands, and to take and pay for at fair prices my outfits, was required by the government of the United States, and was conceded by that of Peru in the negotiation which resulted in the arrangement of the 17th November last, and was intended by both parties to embrace in its provisions all the vessels which I was obligated to load—the object being, in some measure, to remunerate me for the losses occasioned by the abrupt termination of the business, and for the expenses incurred for outfits, laborers,

transports, storeships, and agencies in the Pacific and elsewhere, and for such other expenditures and responsibilities as were necessarily connected with such an undertaking. I now beg leave to state that, prior to the settlement of this question, as before mentioned, a particular and personal friend of Mr. J. J. de Osaña demanded for *his* influence in inducing the minister to make said arrangement and to promise an advance of fifty thousand dollars that I should agree to pay him one dollar a ton for every ton of guano which should be delivered in the United States by me under said arrangement; and that the agents of Peru, acting under the authority and instructions of the said minister, also demanded a commission of more than another dollar a ton for their services for paying over to me the freight money and making the said advance. I was compelled to yield to these hard conditions to maintain my commercial reputation, staggering under the very heavy expenditures and responsibilities incurred in this business, amounting to more than half a million of dollars; but, hard as such exactions were, I should have submitted to them without a murmur, if the conditions by which they were extorted had been fulfilled; but, after they had obtained from me the endorsement of my charter parties, and an order, as per copy enclosed, marked "J," had been transmitted by me to my agent, Captain John O. Cables, in Peru, to pay any and all funds he might have belonging to me to the house of Messrs. Barreda & Brother, agents of Peru, at Callao, they then declined to make the advance before mentioned, which had been promised, and the minister declined directing the same.

In conclusion, therefore, permit me to say that, since the only consideration that induced me to yield to such demands has not been complied with, either by the minister or the agents of Peru, I feel compelled to appeal, through your excellency, to the government of Peru for justice, and to ask—

Firstly. That the request of the government of the United States, made on the 1st of December last, by the authority and advice of the Peruvian minister, shall be complied with, (which was to settle the number of registered tons of shipping which should be loaded on my account at the Chincha islands, under the arrangement of the 17th of November last;) and

Secondly. That their agents in this country shall be instructed to pay to my order *twenty silver dollars* for every ton of guano which shall be delivered in the United States from such ships chartered by me, without making any deductions therefrom for commissions or otherwise; and

Thirdly. That the government of Peru will not only *not* encourage the breaking of contracts made with me, but will direct that such ships, and such *only* as conform thereto, shall be loaded with guano at all, and that their agents, Messrs. Barreda & Brothers, may be directed to cancel all subsequent contracts made by them with the owners of vessels previously chartered to me, and not to make any such others.

I have the honor to be, your most obedient servant,

A. G. BENSON.

HON. J. RANDOLPH CLAY,

Minister near the government of Peru.

NEW YORK, *November 27, 1852.*

SIR: The action of our government, suspending its orders to protect our shipping while engaged in loading guano at the Lobos islands, and the proclamation of its officers in the Pacific, warning ship-owners against violating the decree of Peru in regard thereto, have induced many of the ship-owners to abandon their charters; and if this should have been the case generally, the honorable Secretary will not fail to perceive how very injuriously it would affect my interest.

All the expenses have been incurred for laborers, materials, &c., to load fully one hundred thousand tons of shipping, (forty thousand of which are estimated to be under engagement up to this date.) Now, what I desire is, that the Secretary of State will request the Peruvian minister to consent (under the arrangement recently made between the two governments) to liquidate, at ——— tons per ship's register, the amount which shall be delivered on board vessels chartered by me, and to extend the time for presenting the charter parties for endorsement.

Such a settlement made now will prevent future differences from occurring between the charterers of the ships and the Peruvian government, or its agents, and difficulties to our own government in settlement of disputes arising therefrom; and as there is no reason to suppose that the minister of Peru would object to such a request, I beg leave most respectfully and earnestly to hope that the honorable Secretary of State will, at his convenience, make such a request in my behalf.

I have the honor to be your obedient servant,

A. G. BENSON.

HON. EDWARD EVERETT,
Secretary of State, Washington, D. C.

Mr. de Osma to Mr. Everett.

[Translation.]

UNION PLACE HOTEL,
New York, December 4, 1852.

I have this day received your excellency's note of the 1st instant, enclosing copy of a letter addressed to your excellency by Mr. A. G. Benson, on the 27th of last month, suggesting an arrangement in regard to the freighting of vessels sent to the Lobos islands, to which your excellency calls my attention, in order to ascertain whether it is in my power to enter into an arrangement of this description.

Having informed my government of the termination of this matter, I do not consider myself authorized to alter the terms of the offer which I made to your excellency in its name, in my communication of the 17th of last month, which terms are so clear, in my opinion, that they cannot give rise to any difficulties in their application or

fulfilment. With this view, I transmit your excellency's note to my government, in order that, after taking the same into consideration, said government may adopt any resolution it may think proper.

Your excellency will be pleased to accept the assurances of my high consideration and regard.

JOAQ'N J. DE OSMÁ.

The Most Excellent EDWARD EVERETT,
Secretary of State, Washington.

DEPARTMENT OF STATE,
Washington, December 10, 1852.

SIR: I transmit to you herewith a copy of a translation of a note from Mr. J. J. de Osma, minister of Peru, in reply to one from this department enclosing a copy of your letter of the 27th ultimo, in relation to the freighting of your vessels at the Lobos islands.

Mr. de Osma, you will perceive, declines making any special arrangements in reference to your vessels without particular instructions from his government, to which he has referred the subject.

I am, respectfully, your obedient servant,

EDWARD EVERETT.

A. G. BENSON, Esq., *New York city.*

NEW YORK, *February 7, 1853.*

SIR: I am quite happy to learn from the note of your excellency of the 5th instant that the only reason for not directing the acceptance of the ships named in my note of the 28th ultimo is, that it would subject the Messrs. Barreda & Brother to the heavy penalties contained in the subsequent charter parties of said ships made with those gentlemen.

I will therefore thank you to direct the acceptance of such ships only as the owners or charterers of which shall request Messrs. F. Barreda & Brother, in writing, that the charters made with them may be cancelled, the same having been made after the government of the United States had given public notice that it would not protect American vessels in going to the Lobos islands contrary to the decrees of Peru, and after it was currently reported that the government of Peru would confiscate every vessel caught in violating such decrees, and that the charters which those gentlemen had made with me before those made with Messrs. F. Barreda & Brother shall be accepted.

I am, &c.,

A. G. BENSON.

His Excellency JOAQ'N J. DE OSMÁ,
Minister from Peru, &c., &c., Washington, D. C.

WASHINGTON, *February 21, 1853.*

DEAR SIR: My occupations and the bad state of my health has impeded my acknowledging in course your letter dated 7th instant.

I am sorry that you have not well understood mine of the 5th, in which I declined to order Messrs. Barreda & Brother to accept the charter parties made by you of the vessels named "Golden Era," "J. W. Paige," "Berlin," and "Defiance." The reasons by which I was governed was, that the owners afterwards having made other contracts, you had no right to dispose of these vessels on the 17th November; not having the opinion on this point, I cannot accede to what you require of me in your last communication.

I am your attentive servant,

JOAQU'N J. DE OSMA.

A. G. BENSON, Esq.

NEW YORK, *January 19, 1853.*

DEAR SIR: I wrote you that any funds you had to remit them to me; you can now, if you have not sent them, pay them over to Barreda & Brother, at Callao, if they will allow you the regular exchange; and they always charge twelve per cent. premium on all money they advance the captains of their chartered ships, and should allow you something near this premium also. Have the money passed to Barreda & Brother's credit, of Baltimore, for my account, and send me a receipt for the same.

A. G. BENSON.

Captain JOHN O. CALEB, *Callao.*

Mr. Benson to Mr. Marcy.

NEW YORK, *April 26, 1853.*

SIR: I beg leave to refer the Department of State to the enclosed copies of correspondence between the late Executive of the United States and J. J. de Osma and the undersigned.

The barque Golden Era has recently arrived at Baltimore with a cargo of guano from the Chincha islands.

This vessel is the first arrival of those included in the terms of the arrangement made on the 17th of November last, and I feel myself therefore, entitled to ask that the government of the United States will give me all proper aid in sustaining my rights under that arrangement.

An early decision on this subject is of material importance to the interest involved.

I have the honor to be your obedient servant,

A. G. BENSON.

Hon. W. L. MARCY, *&c., &c., &c.*

NEW YORK, *February 7, 1853.*

SIR: I beg leave to call the attention of your excellency to the enclosed letters, and to request that, if, in your opinion, such vessels were included in the arrangement referred to therein, you will request Mr. Osma to have them accepted. I have to fear, if such notice shall not be given, that the benefit of the arrangement intended to protect me from loss in the heavy responsibilities and expenditures incurred in the enterprise to which they relate will not be realized.

I have the honor to be your excellency's most obedient servant,
A. G. BENSON.

MILLARD FILLMORE,
President United States, Washington, D. C.

NEW YORK, *January 28, 1853.*

SIR: The following vessels were engaged to bring cargoes of guano for me, and sailed for the Pacific as follows, viz:

Barque Golden Era sailed March 26, and was engaged July 13.

Barque J. W. Paige sailed April 3, and was engaged June 19.

Ship Berlin sailed August 15, and was engaged July 13.

Ship Defiance sailed June 5, and was engaged July 19.

Coming, as all these vessels do, strictly within the purview of your note of the 17th November to the honorable Secretary of State of the United States, I have to request that you will have the goodness to instruct Messrs. F. Barreda & Brother to accept these charter parties.

I have the honor to be your obedient servant,
A. G. BENSON.

His Excellency JOAQUIN DE OSMA,
Minister Plenipotentiary, Washington, D. C.

WASHINGTON, *February 5, 1853.*

MY DEAR SIR: After I received your letter of the 28th ult., soliciting that I order Messrs. F. Barreda & Brother to accept the charters that you made with the owners of the vessels named "Golden Era," "J. W. Paige," "Berlin," and "Defiance," believing by you that they were included on the terms offered or made by the Secretary of State on the 17th November, I asked Messrs. Barreda & Brother to inform me of the circumstances relating to these vessels, and the answer I have received result: That before the 17th November you had no right to them, their owners, or their agents, having before chartered them to Messrs. Barreda & Brother, which was done, no doubt, not believing valid the contracts made by you; and as they are made under the condition of a heavy penalty to the party breaking them, I cannot oblige Messrs. Barreda & Brother to accept your contracts,

as it would place them in a situation to oblige them to incur that responsibility.

In my conception, you have in this case to claim indemnity of the owners, if there was no power to annul their contract made with you.

I am, &c., &c.

JOAQU'N J. DE OSMA.

A. G. BENSON, Esq.

Mr. Marcy to Mr. Benson.

DEPARTMENT OF STATE,
Washington, May 3, 1853.

SIR: I have to acknowledge the receipt of your letter of the 26th ultimo announcing the arrival of the "Golden Era," laden with guano, at Baltimore, and requesting the interposition of the government in sustaining your rights under the arrangements of the 17th November last with the representative of Peru.

As the "Golden Era" is one of the vessels included in the arrangement referred to, and as her name is upon the list furnished by Mr. Osma of the vessels entitled to the benefits of the settlement, the department does not anticipate that you will experience the slightest difficulty in your business relations with the agent of Peru.

I am, &c.

W. L. MARCY.

A. G. BENSON, Esq., *New York.*

Mr. Prime to Mr. Marcy.

25 WALL STREET, NEW YORK,
July 11, 1853.

SIR: Having been the legal adviser of Messrs. A. G. Benson and James C. Jewett for the past year, during which time the guano expedition was fitted out from this country, and the negotiations between this government and that of Peru were concluded, those gentlemen have authorized me, in their behalf, to address this letter to your department, to which I ask leave to call your attention.

It will be remembered that these gentlemen had fitted out a large and expensive expedition on the assurances of the State Department that the government would protect them in loading guano at the Lobos islands, and that, subsequently, when the government saw reasons to change its views, the negotiations which were then had with the Peruvian government had special reference to their ships.

These gentlemen have never received from our own government any official information of the result of those negotiations, and have been left to conclude their arrangements on newspaper accounts or the statements of the agents of Peru.

It is, therefore, absolutely necessary for them to apply to your department for information to guide them in certain contingencies likely to arise, and some of which have already arisen.

I have, therefore, to ask for this information, which I will take leave to do briefly and distinctly:

1. Were the negotiations had with Peru concluded by any treaty or agreement signed on behalf of both or either government, or were they merely correspondence?

2. What was the conclusion arrived at?

3. Does your department understand the Peruvian government as held only to the *letter* of the treaty or correspondence, or was anything left to the honor of that government, and are they to be regarded as bound to carry out the manifest *design* of the settlement?

In order that the last query may be distinctly understood, I have to submit the following cases which have occurred, and to ask the advice of the department:

In the list of vessels which Messrs. Benson and Jewett chartered, and which they understood the Peruvian government were to take off their hands, were several which, becoming alarmed at the state of affairs and fearful of being seized and confiscated, abandoned their intended voyages in behalf of their charterers, and entered into new charter parties on their own behalf *with the Peruvian government*, at Callao and elsewhere.

In addition to this we learn, upon undoubted authority, which we are ready to submit to your department, the Peruvian government agents in various places have encouraged the captains of vessels in abandoning their charters and loading on Peruvian account; and in this connexion we have to specify particularly the commandant of the Peruvian force at Lobos islands, and the Peruvian consul at San Francisco, as well as the agents of that government at Callao. Thus by a most highhanded, and we may be pardoned for adding a characteristic course, that government is endeavoring to avoid the honorable fulfilment of its agreement with the United States, as we understand the agreement.

These vessels the Peruvian government intimate their intention to hold on their new charters, and not to consider as coming within the arrangement made by the governments.

Not being informed definitely what that arrangement was, we have to inquire of your department whether we are to consider this so, or whether the government of the United States will consider Peru bound to account to us for these vessels.

2. Certain other vessels, chartered by us in the Pacific ocean and elsewhere and proceeding to the Lobos islands, learned the unsettled state of the negotiation, and fearing seizure and condemnation, abandoned their voyages and left for parts unknown.

Are Messrs. Benson and Jewett left in such cases to a claim on their own government, or does your department understand the arrangement with Peru as sufficiently broad to allow of the substitution of other vessels of equal tonnage and capacity in place of those thus defaulting, as intimated in the letter of Mr. Everett to Señor —?

It appears to us that if the arrangement was one of mutual honor,

such an arrangement ought to be made by Peru. I need hardly to call your attention to the fact that it is useless, in many cases, to speak of our rights as against owners ; for at the time of the arrival of the vessels in the Pacific it was, to say the least, doubtful whether our government would regard their intended traffic as legal, even though sent under government auspices and assurances of protection.

The only remaining point to which I have to call your attention is this:

All of the vessels chartered by us were chartered to go to one of the guano islands, and load there or at a neighboring island. They were all ordered to the Lobos islands. By the time of their arrival there, the government arrangement was concluded, and the Peruvian government, unwilling to load them at Lobos, ordered them to the Chinchas islands, which it is probable is not a *neighboring* island.

It may well be doubted whether this does not operate as a violation of the charter party on our side, and leaves it open to question whether the vessels are bound to take cargo on our account.

In the event of their refusing so to do, are we to look to our own government or to Peru to protect us from loss?

After this statement, it will be evident to the State Department that the answer to the question we have asked, depends wholly on the nature and definiteness of the arrangement made with the government of Peru, and the strictness with which it is to be considered as final.

We are entirely in the hands of our own government in the matter, both as to the interpretation of the arrangement made and the holding of Peru to an honorable adjustment of it, and also to protect us against losses on the immense outlays and risks incurred in this enterprise.

I have the honor to be, sir, your most obedient servant,

WILLIAM C. PRIME,
Counsellor at Law.

Hon. WILLIAM L. MARCY,
Secretary of State, &c., &c.

Mr. Benson to Mr. Marcy.

NEW YORK, October 5, 1853.

SIR: I take leave again to address the government for assistance and protection in relation to the vessels chartered by me under its authority and protection to load with guano in the Pacific, as per pro forma blank charter party enclosed. I have the honor also to beg reference to copies of two letters relating to this subject, and enclosed herewith: one of February 21, 1853, from the undersigned to our minister near the government of Peru ; and the other of July 11, 1853, from W. C. Prime, esq., to the Department of State.

Since the receipt of your letter of the 3d of May last, (a copy of which is also enclosed herewith,) besides the "Golden Era," referred to therein, the following vessels, included in the arrangement of the

17th of November last, have arrived and delivered their cargoes of guano in the United States, viz: "Sarah Chase," "J. W. Paige," "John Q. Adams," and "Arcole," but I regret to be obliged to inform the department that, contrary to its just expectations as contained in said letter that "I should not experience the slightest difficulty in my business transactions with the agent of Peru on her ('Golden Era') account," the agents of Peru still utterly refuse to account to me for the charter of that vessel or the "J. W. Paige," and also that they refuse to settle the charters of "J. Q. Adams," "Sarah Chase," and "Arcole" until they can force me to pay the port charges exacted by Peru *contrary to my charter parties*, and the demurrage due from Peru for detaining those vessels longer than was allowed by their charter-parties, and until I will allow them a commission of one dollar a ton for paying over the money.

Under this extraordinary state of things I appeal for immediate relief to my government, and request that Peru may be required to fulfill the conditions of the arrangement of the 17th of November last, in reference to the vessels before mentioned, and all others whose charter-parties have been endorsed to their agents.

I desire to inquire whether the government has received from the Peruvian government any reply to Mr. Everett's note of December 1, 1852, and if not, to beg the government to request an immediate answer thereto. There is reason to believe that the government of Peru authorized its minister in Washington to accede to the request contained in the note of Mr. Everett, but that, for certain reasons which do not yet appear, it has not been done. I am decidedly of the opinion that all the difficulty which has occurred, both here and with the vessels in Peru, has been occasioned by certain influential parties desirous of so embarrassing this whole matter as to drive me to dispose of my interest therein at a low *figure*, and then turn round and make the government of Peru pay as much money, and load as many ships as possible under the arrangement.

I have the honor to be, your most obedient servant,

A. G. BENSON.

Hon. WILLIAM L. MARCY,
Secretary, &c., &c.

Mr. Marcy to Mr. Benson.

DEPARTMENT OF STATE,
Washington, October 15, 1853.

SIR: I have to acknowledge the receipt of your letter of the 5th of October, and of the enclosure therewith transmitted.

The object of your communication is to obtain the interposition of this department with the Peruvian government in regard to the difficulties which have occurred between their agents, Messrs. Barreda & Brother and yourself, respecting the cargoes of guano received by the "Sarah Chase," "J. W. Paige," "John Q. Adams," and "Arcole."

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You state that the agents utterly refused to account for the charters of the "Golden Era" and the "J. W. Paige" to you; and also that they refuse to settle the charters of "J. Q. Adams," "Sarah Chase," and "Arcole," until they can force you to pay the port charges exacted by Peru contrary to your charter-parties; and you "request that Peru may be required to fulfil the conditions of the arrangement of the 17th of November last, in reference to the vessels before mentioned, and all others whose charter-parties have been endorsed to their agents."

As the names of all these vessels appear in the list of those which were embraced in the agreement of the 17th of November last, as furnished by Mr. J. J. de Osma, then minister of Peru, this department will feel called upon to exert itself to secure to *all* the vessels embraced in the settlement of November the twenty dollars per ton freight therein guaranteed, and, when requested to interpose for this object by the charterers of any vessels included in that adjustment, a proper representation will be made to the Peruvian chargé d'affaires near this government.

This department, however, is in possession of a private agreement entered into between yourself and the Barrera brothers on the 8th of January last. As that agreement is not recognized by the government of the United States, any violation of its terms by either party must be adjusted by arbitration or legal proceedings.

The immediate causes of difficulty between you and the Peruvian agents appear to result from your different interpretations of the conditions of certain charter-parties as to the payment of port charges, demurrage, and commissions. The settlement of questions of this character does not fall within the province of this department.

In reply to your inquiry whether the Peruvian government has communicated to that of the United States any reply to Mr. Everett's note of the 1st of December, 1852, I have to inform you that, under date of the 13th instant, Mr. J. J. de Osma communicated to this department the refusal of Peru to acquiesce in the propositions contained in Mr. Everett's letter above referred to.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

A. G. BENSON, Esq.,
New York city.

Mr. Benson to Mr. Marcy.

NEW YORK, October 18, 1853.

SIR: I am in receipt of your favor of the 15th instant, in which you state, with reference to the "Golden Era," "J. W. Paige," "Sarah Chase," "John Q. Adams," and "Arcole," that, "as the names of all these vessels appear in the list of those which were embraced in the agreement of the 17th of November last, as furnished by Mr. J. J. de Osma, then minister of Peru, this department will

called upon to exert itself to secure to *all* vessels embraced in the settlement of November the twenty dollars per ton freight therein guarantied; and, when requested to interpose for this object by the charterers of any vessels included in that adjustment, a proper representation will be made to the Peruvian chargé d'affaires near this government."

I have therefore respectfully to state that the ships "J. W. Paige" and "Golden Era," before mentioned, have both arrived in this country loaded with guano, and have delivered their cargoes to the agents of Peru in Baltimore, and the government of Peru decline paying me the twenty "pesos fuertes" per ton agreed on, or to account to me therefor.

I respectfully ask the State Department to exert itself to secure to me, as charterer of those vessels, the twenty dollars per ton freight as agreed on, and to interpose with Peru for that object.

I also beg leave to state that the "J. Q. Adams," "Sarah Chase," and "Arcole" have arrived, and discharged their cargoes, as before mentioned, and the government of Peru refuse to pay the twenty silver dollars per ton on their cargoes, alleging, as an excuse, certain private claims which grew out of an agreement to which you refer, and which, as you properly state, is not recognized by the government. Since, however, this agreement has been submitted to the consideration of the Department of State by Peru, I deem it proper to state it was obtained by false pretences, as will appear by reference to the accompanying affidavits "A" and "B" of Messrs. J. C. Jewett and R. W. Trundy; also to extract "C" from my letter of 21st February last to the Hon. J. Randolph Clay, which, together, show what were my pecuniary necessities, and the advantage intended to be taken thereof by Peru.

I have always supposed that the government of the United States understood, by the arrangement of the 17th of November last, that all the ships included therein were to be loaded by Peru at the Chincha islands, according to the conditions of their several charter-parties, as it is evident the late minister of Peru, J. J. de Osma, understood it, from the fact that, in order to fulfil the only conditions of said charter-parties brought to his notice, he exercised his plenary powers in suspending the laws of his own country, and directed, contrary thereto, that such ships should be sent direct to the Chincha islands, and thence direct to their several ports of destination, and that no tonnage dues, or other government port charges, should be exacted of them.

If, therefore, such is the understanding of this government, I have now only to request it will express to that of Peru its expectation that all such ships chartered by me shall be thus loaded, and that twenty silver dollars per ton freight shall be paid to my order on the proper delivery of each and every cargo, and that the receipt thereof of the charterer of said ships will be satisfactory to the government.

I have the honor to be, your obedient servant,

A. G. BENSON.

HON. WILLIAM L. MARCY,
Secretary of State, Washington, D. C.

In the matter of the vessels chartered by A. G. Benson, to load with guano, &c.

CITY AND COUNTY OF NEW YORK, ss:

James C. Jewett, of said city, shipmaster, being duly sworn doth depose and say: That he was present in New York city, at various times, when negotiations were pending between A. G. Benson, esq., and the house of Barrreda & B o., in relation to the assuming of charters of vessels by said house on behalf of the Peruvian government; deponent also had frequent interviews with said house on behalf of that business; that the said house repeatedly and most distinctly agreed to advance to A. G. Benson the sum of fifty thousand dollars if he would assign the charters to them and execute a certain agreement, (which deponent has since seen as executed,) and that said fifty thousand dollars should be a part of the \$20 per ton payable to said Benson on said charters, as per government arrangement; that such advance was agreed on as a condition of the executing said agreement and was considered a part of the agreement, and that deponent was present at the execution thereof and knows that A. G. Benson executed the agreement on that condition and understanding, and the fact that the said sum was to be immediately advanced was repeatedly mentioned and thoroughly understood between the parties; that subsequently deponent, at Benson's request, called on Barrreda & Bro., and demanded said sum; said house admitted their promise to pay it, but referred deponent to the Peruvian minister, saying they would advance it if he assented. Deponent called on Mr. Osma, the Peruvian minister at Washington, immediately, and Mr. Osma distinctly and unequivocally promised deponent that he would write a letter by that day's mail, directing Barrreda & Bro., as agents for Peru, to pay over said sum of fifty thousand dollars to Mr. Benson. Deponent returned to Baltimore and saw Barrreda & Bro., and they refused the advance, and have constantly refused to advance the said sum. Deponent saith he has been entirely familiar with this whole transaction, because he has been interested in the matter with Mr. Benson as partner in the transactions.

JAMES C. JEWETT.

Sworn to before me, this 18th day of October, 1853.

CHARLES SPEAR, [L. s.]
Notary Public.

I, R. W. Trundy, of New York, do hereby state that the foregoing statement, so far as it relates to the promise of Señor Osma to advance the sum of fifty thousand dollars to Mr. Benson, is known to me to be true, and that such a promise was repeatedly made in my presence during the negotiations of the guano matter.

R. W. TRUNDY.

Sworn to before me, this 18th day of October, 1853.

CHARLES SPEAR, [L. s.]
Notary Public.

[Extract.]

I was compelled to yield to these hard conditions to maintain my commercial reputation, staggering under the very heavy expenditures and responsibilities incurred in this business, amounting to more than half a million of dollars; but hard as such exactions were, I should have submitted to them, without a murmur, if the conditions by which they were extorted had been fulfilled; but after they had obtained from me the endorsement of my charter-parties, and an order, as per copy, enclosed marked "I," had been transmitted by me to my agent, Captain John O. Calebs, in Peru, to pay any and all funds he might have belonging to me to the house of Messrs. Barreda & Brother, agents of Peru, at Callao, they then declined to make the advance before mentioned, which had been promised, and the minister declined doing the same.

Mr. Benson to the Secretary of State.

NEW YORK, November 15, 1853.

SIR: In conformity to the request of the Assistant Secretary of State to submit in writing the statement I had the honor to make to him verbally on the 4th instant, regarding the origin, progress, and present state of the expedition fitted out by myself to the Lobos islands, in the Pacific ocean, I have the honor to state that:

In the early part of the year 1852, several British subjects applied to Lord Palmerston, secretary of foreign affairs, to know if their government would protect them in resorting to the Lobos islands, for the purpose of obtaining guano. In reply to those inquiries, his lordship was said to have intimated, that although England presented no claim to those islands, still, as Peru had not enumerated them in the list of her dependencies, nor described them within the limits of her boundaries when she asked the world to acknowledge her independence, there might be other countries who had such a claim by right of occupancy in fishing, or otherwise. This official view of the question of British interest in those islands was extensively copied throughout the kingdom, and led to several communications, among which was a letter from Mr. Edward Lawson, in the London Times, of May 18, 1852, in which, after giving an account of the discovery of those islands by himself, in 1808, he says in closing, that it is understood the United States government will protect her citizens in resorting to the Lobos islands, for the purpose of obtaining guano.

This, together with a previous correspondence with an English house, directed my notice to the subject, and the returning of Captain James C. Jewett from the Pacific, in command of the barque "Philo-mela," which I owned jointly with him, led to its further examination, and we agreed to apply to our government for information. Accordingly, on the 2d June, 1852, the letter of Captain Jewett, as per copy annexed, marked "A," was addressed to Mr. Webster, inquiring "whether citizens of the United States could take guano from the

Lobos islands, on the coast of Peru, without infringing on the rights of her citizens or subjects, or government of any other nation," and three days thereafter Mr. Webster replied, as per copy annexed, marked "B," by declaring distinctly that "this government considered it their duty to protect citizens of the United States who might visit the Lobos islands, for the purpose of obtaining guano, and that he would suggest to the Secretary of the Navy that a vessel-of-war be ordered to repair to those islands for that purpose."

Here it may be proper to state that several other American citizens, noticing the contents of the English papers on this subject, almost simultaneously, though without any pre-concert of action, applied to our government to ascertain its policy relating thereto; copies of such of those applications and answers thereto as came to my notice in the newspapers are annexed hereto, marked "C."

I did not, however, act on the authority of Mr. Webster's letter alone, but immediately on its receipt Captain Jewett repaired to Washington, to learn the earliest moment when the orders to the Pacific squadron referred to by Mr. Webster should be issued by the Secretary of the Navy. On the 9th of June, 1852, he telegraphed me as follows: "Orders issued yesterday to commodore for full protection—Jewett."

I then proceeded immediately to organize and fit out an expedition to the Lobos islands, to bring guano to this country and elsewhere, embarking in it an immense amount of capital, and assuming heavy responsibilities, on the faith of the pledge of my government, and that I was introducing a fertilizer of great value, that could not fail to meet a ready market. One of my first acts was to fit out the bark "Sarah Chase," from this port, with all the materials and laborers necessary for founding and sustaining for two years a colony on the Lobos islands, for the purpose of loading with guano such vessels as I should subsequently send there for that purpose. The charter of this vessel, including her crew, laborers, outfits, &c., was necessarily very expensive. She sailed from New York on the 23d of July, 1852. To provide for a failure of the Sarah Chase by wreck or otherwise, I engaged the services of a gentleman of high character to proceed at once to the Pacific, and there procure a vessel, and duplicate the bill of lading of the "Sarah Chase," and despatch her to the Lobos islands with double the complement of laborers, which he proceeded to do, and sailed for the Pacific (via Panama) on the 5th of July, 1852.

I next employed an agent to charter every vessel fitted for the work that could be procured or reached in the Atlantic, and my agent in the North Pacific was instructed to do the same. I gave them both authority and directions to take any and every suitable vessel that might be presented within the year next to come, and to use any and every proper means to effect the object in view, which was generally to fit out a large expedition of unlimited carrying capacity.

Having chartered quite a number of ships and provided the means and means from the Atlantic and Pacific to load them, and having made every preparation which a prudent forecast would seem to have suggested, to guard against the possibility of a failure of the enterprise, (not entertaining the shadow of a doubt but the government of the United States would fulfil its voluntary promises of protection

I next employed a gentleman fitted for such a mission, and despatched him to England on the 7th of August, 1852, with authority to negotiate a contract for the delivery there of one hundred thousand tons of guano.

My agents engaged for the Pacific were Captains James C. Jewett, John O. Calebs, and Mr. A. B. Howe, and my contracts with them as a whole were as follows, viz. : one half of the net profits on all the ships chartered in the Pacific, and a commission of five per cent. on the amount of freight of guano loaded on board all the ships chartered both in the Atlantic and Pacific.

Captain Calebs sailed in charge of the expedition, on board the bark "Sarah Chase," direct for the Lobos islands, and in the absence of the two other gentlemen was to take the entire charge of loading the ships to be sent there. He arrived at those islands on the 13th of December, 1852, and was immediately shown the proclamation of Commodore McCauley of the 18th of October, 1852, and on the same day received orders (as per copy annexed, marked "D") from the commandant of a Peruvian man-of-war directing him to leave the Lobos islands at once, and forbidding him even to come to anchor. Under such circumstances he wrote the letter of December 13, 1852, (as per extracts annexed hereto, marked "E.") and leaving orders (as per copy annexed, marked "F") for the ships which should afterwards arrive, he proceeded to Callao. There he was informed of the arrangement made at Washington between the two governments on the 17th of November, 1852, in pursuance of which (as the expedition was thereby entirely broken up) he immediately discharged and paid off his men, and offered his entire outfits to the authorities of Peru; but instead of receiving and paying for them "*prior to the delivery of the articles*," according to article second of the agreement before mentioned, they would neither *take* nor *pay* for them, till finally he was compelled, in order to save me from further loss by their deterioration by a longer detention of the bark, to call upon two disinterested merchants of Callao to appraise his cargo, as it was landed and placed in the public stores. Consequently, after a detention of the bark by the authorities of Peru *one hundred and fifteen days* from the date of her arrival at the Lobos islands, she was finally despatched from Callao to the United States on the 7th of April, 1853. They subsequently paid him eight thousand six hundred and sixty-six dollars and eighty cents, the same being a portion of the appraised value of the articles landed, which was nine thousand eight hundred and thirty-seven dollars and twenty-five cents, and on the 12th of August last he writes me from Callao (where, and at the Chincha Islands, he has been attending to the closing up of this business since his first arrival there) that the balance due still remains unpaid. I have repeatedly written him to return home at the earliest moment the interests involved will warrant, and he has as often replied that he thinks his presence there still necessary, and that Mr. Clay also advises him to remain.

The agent despatched to the Pacific to duplicate the expedition by the "Sarah Chase," as before mentioned, was Mr. A. B. Howe, who arrived at San Francisco on the 26th of August, 1852. He there

chartered the barks "Cyrus" and "Tartar," and ships "Ellen Brooks" and "Emily Taylor," to load with guano at the Lobos islands. These four vessels were to touch at the Sandwich Islands for the purpose of transporting to the Lobos islands his laborers, materials, outfits, &c. He then sailed for the Sandwich Islands, where he arrived on the 28th of September. There he purchased a vessel for a storeship at the Lobos islands, and was making active preparations to embark his men and vessels, in accordance with his instructions, when suddenly it was announced that the government of the United States had withdrawn its protection. This intelligence so utterly confounded and overwhelmed him that, in a fit of alienation of mind, he committed suicide, thus throwing everything into perfect confusion, bringing the expedition to a dead stand, and placing me in a most awkward and embarrassing condition.

The agent sent to England was Mr. George W. Billings, who arrived there on the 17th of August, 1852. He was authorized to contract, under a penalty on my part of one hundred thousand pounds sterling, for the delivery there of one hundred thousand tons of guano, which contract was completed on my part as far as I was able, but failed because the government of the United States, after inviting me into such an enterprise, when I was fairly embarked and could not retreat, announced to the world that the business in which I was engaged was unlawful, thereby compelling me to dishonor engagements and pay losses arising solely from a perfect reliance on its promises.

The foregoing brief recital of the condition of my agents abroad brings me to consider how this sudden and unlooked-for change in the policy of the government affected me at home. As before stated, I had fully chartered a large number of vessels, and signed charter-parties, and had promised to accept and execute charters for any other good vessel which might be offered during the year following. Others had accepted offers binding on my part, but on theirs only in the event that it should appear when the ships had discharged their outward cargoes I could load them according to agreement. My agents had pursued the same course; and the consequence was that it was entirely impossible to say what vessels were actually chartered, and what were only agreed to be chartered.

Here it may be proper to state, that from the very beginning of this business till the day its final settlement was announced, the owners of nearly every vessel who had chartered or were negotiating charters with me were threatened by the agents or charterers of vessels for Peru in this city, either with the seizure of their ships or with the loss of their charters; but, notwithstanding these misrepresentations, so vexatious and expensive were the conditions attached to the Peruvian charter-parties, in port charges, commissions, and in going first from Callao to Pisco, thence to Chincha, then to Pisco, and back to Callao to clear—that ship owners were disposed to run some trifling risk (if risk it could be properly called to confide in the promises of their government) to secure a charter from and to a direct port free from port charges, and especially with the addition of one to two dollars a ton more freight than the agents of Peru were offering.

I now come to consider the government arrangement with Peru, of

which I had no notice prior to its conclusion, except in a letter from the State Department to Captain Jewett, of the 20th September, 1852 — (See Captain Jewett's letter to Mr. Conrad, of September 22, 1852.)

It would seem, then, that the government of the United States had information before the settlement of this question, that even if all the ships chartered and engaged by me should be loaded at twenty dollars a ton freight, in conformity to their several charter-parties, that "it would not save me from absolute and irretrievable ruin." The arrangement, however, was made between the two governments by Mr. Everett and Mr. Osma, and I was informed *after it was completed* that it contained certain provisions for my protection, and that the agreement on the part of Peru to freight at twenty silver dollars per ton, from the Chincha islands, the ships which I had chartered and had made provision to load at the Lobos islands, and to take and pay for my outfits at fair prices on their delivery at Lobos islands, was required by the government of the United States, and was conceded by that of Peru as a condition precedent to the negotiation which resulted in the said arrangement, and that it was intended at the time by both parties to embrace in its provisions all the vessels which I was obligated to load, the object (on the part of the government of the United States at least) being in some measure to remunerate me for the losses occasioned by the abrupt termination of the business, and for the expenses incurred in outfits, laborers, transports, storeships, and agencies in the Pacific and elsewhere, and for such other expenditures and responsibilities as were necessarily connected with an undertaking of such magnitude. But instead of carrying out the arrangement even in accordance with its letter, much less its spirit, I have now to charge distinctly that the treatment I have received from the agents of that government has been such as I cannot longer submit to without an appeal to my government. It has been characterized by insolence, overbearing claims and demands, by violation of word and contract, by threats, and by a total violation of all those principles of honor and honesty which ought to govern national proceedings.

In the first place, I found the agents of that government unapproachable except they could make some arrangement to receive large commissions on their own behalf.

On enquiring who furnished Mr. Osma with the list in his letter to Mr. Everett I could not ascertain, but I did learn from my own agent, R. W. Trundy, esq., that prior to Mr. Osma's letter to Mr. Everett, he, at Osma's request, handed him a list of vessels in addition to those previously named to the Department of State, which he furnished from memory, as engaged or chartered on my account.

This list is given in an affidavit of R. W. Trundy, herewith annexed, marked "G."

Samuel F. Tracy, esq., was the friend of Mr. Osma, who acted as interpreter in the personal interviews between Mr. Trundy and Mr. Osma, and it will be perceived by Mr. Trundy's affidavit that Mr. Osma himself promised that these vessels should be entitled to the benefits of the arrangement, or such others as might be substituted for them.

By this time I was in such a state with reference to my pecuniary matters, that it became necessary to enter into some arrangement to

procure an immediate advance of money, and taking advantage of their knowledge of my pecuniary condition, the agents of the Peruvian government offered me an agreement to sign, which they professed to be with the most honorable and honest intentions; as an inducement to procure my assent to it, they offered me an advance of fifty thousand dollars immediately, and this offer was repeated again and again. It was for this, and this only, that I consented to sign that agreement. It was on the distinct and solemn pledge of an immediate advance of \$50,000 that I signed the agreement. I refer for evidence of this to copies of the affidavits of James C. Jewett and R. W. Trundy, annexed, marked "H" and "I," (the originals of which were submitted to your department in my letter of the 18th ultimo.) The nature of the agreement itself is but general and not specific, and it was understood to be a memorandum of the terms on which the fifty thousand dollars was to be advanced.

I signed the agreement and then asked for the advance, which was put off from day to day, though always promised, and finally was refused. The whole object of the agreement having been violated, I regarded it, as I now pronounce it, entirely void.

Having broken good faith with me in this manner, it was to be expected that the Peruvian government would violate their honorable obligations in other respects. Accordingly, I was not surprised to learn from my agents at San Francisco that the agents of Peru there were offering twenty dollars per ton freight, and that the Peruvian consul was informing the captains of vessels chartered to me that "their ships would all be loaded at twenty dollars a ton, and that the owners, and not Mr. Benson, would receive the freights."

The commander of the Peruvian forces at the Lobos islands pursued the same course.

The agents of that government at Callao did the same, and the house of Barrera & Brother, at Baltimore, pursued precisely the same course, and chartered, on behalf of their government, certain of my ships which they *knew* were chartered to me, and have discharged them on arrival at Baltimore, refusing entirely to account to me for their freights.

As a result of all this, up to this date the following vessels, originally chartered to me, have arrived in this country and have discharged their cargoes of guano: "Allioth," "Z. D.," "Sarah Chase," "Tangier," "J. Q. Adams," "Matilda," "Arcole," "Golden Era," "J. W. Paige."

Every one of these ships were included in the list which Mr. Osma sent to Mr. Everett with the promise to take them, and pay me \$20 per ton under the arrangement, and yet the Peruvian government have treated them and me as follows:

1. The "J. W. Paige" they claim to have chartered themselves by a subsequent charter-party. They refuse to account to me for her at all.
2. The "Golden Era" they claim to have chartered themselves in a similar way, and they refuse to account to me for her at all.
3. The "John Q. Adams" they have discharged, but the owners claim a large sum for demurrage as due them, because Peru did not

load her in the time allowed by my charter-party for that purpose. The Peruvian government do not pay this demurrage, and refuse to account to me for this vessel unless I will deduct this amount, and also one dollar a ton for their commissions, and give them a receipt in full.

4. The "Allioth." This ship, on her arrival at Callao, claimed that the charter-party with me was broken by reason of her being ordered from Lobos to the Chinca islands, and the Peruvian government rechartered her on their own account, and refuse to account to me for her.

5. The "Tangier."

6. The "Z. D."

7. The "Arcole." All these vessels have arrived, and the Peruvian government offer to pay me the difference per ton between my charter-parties and twenty dollars, deducting, however, five per cent., or one dollar per ton.

8. The "Matilda." This vessel is in the same difficulty, with reference to demurrage, as the "John Q. Adams."

9. The "Sarah Chase." This vessel was the one despatched, as before stated, with provisions, tools, and materials, for a colony on the islands, and for loading the other ships as they should arrive. By the terms of Mr. Osma's letter to Mr. Everett, it would seem that her cargo was to have been taken at the port of destination, and paid for at a fair price at Callao. The Peruvian government did not thus take her outfits at the Lobos islands, but ordered her away. They did not take them when they were tendered at Callao; and when they did take them, they refused to pay for them in full as they were appraised.

They did not pay her demurrage there or here, and they refuse to pay but nineteen dollars freight.

The word in Mr. Osma's letter is "pesos fuertes." The difference between the silver dollar and the dollar is so material as to render this important.

I have also to refer to the annexed letter from Samuel F. Tracy, esq., a gentleman from whom I cannot ask an affidavit, but whose letter I will cause to be verified by his affidavit, (if I can persuade him to do so,) in case Mr. Osma, or any one on behalf of Peru, denies these statements. I call attention especially to the statement of Mr. Tracy, on the subject of substitution of vessels, for such as might fail to fulfil their charters with me.

The government arrangement afforded a pretext for some vessels to abandon their charters, and it was distinctly agreed that such vessels should be replaced by others of like capacity. This agreement Mr. Osma and Peru subsequently repudiated.

It was distinctly agreed by the agents of Peru that I should have an advance of fifty thousand dollars. This was repudiated.

It was distinctly agreed that I was to have twenty dollars per ton on every ship I had chartered prior to a certain time. This was repudiated.

In brief, I have only to repeat that I have been insulted, deceived,

and ill-treated, by the agents of Peru, and none of their obligations with me have been fulfilled.

I appeal to my government to enforce my rights, which remain where they were in 1852.

I have a large number of vessels now in the Pacific ocean, and elsewhere, which were chartered to me for this express purpose; a large number of others abandoned their engagements pending the withdrawal of protection and the settlement, and some abandoned their contracts, having been offered higher freights by Peru, and some have been lost.

The list annexed hereto, marked "J," comprises the names and tonnage of all the vessels, as far as I now know, which were engaged for me positively or conditionally, though there is no doubt but for the threats and intimidation of the agents of Peru here and elsewhere, I should have had the full number which I made provision to load. Since, therefore, the government of Peru has violated the terms of the arrangement of the 17th of November last, and have broken every promise made with me in regard thereto, and since it is impossible now, on account of the high rates of freight, to substitute other ships vice of those which Mr. Osma agreed to accept, (or substitutes,) and subsequently failed to accept, I now respectfully ask the government to instruct the minister at Lima to demand of the Peruvian government:

In the first place: I be paid the difference between the chartered prices and twenty silver dollars a ton on the carrying capacity of each of the vessels embraced in the list before mentioned, estimating each ship to carry only once and a half more than her registered tonnage, which is much less than the ships which I have chartered will carry, as they are all, with one exception, (the "Defiance,") full built vessels.

The sum of this demand, as per document "K," annexed hereto, amounts to two hundred and seventy-four thousand three hundred and thirty-four dollars and seventy-seven cents, (\$274,334 77.)

Secondly: That the government of Peru be required to fulfil the conditions of all my charter-parties which were tendered to their agents, holding me harmless from any claim from the owners thereof for demurrage, port charges, or otherwise.

Peru having advanced her rate of freight by the latest advices to \$22 a ton, this settlement will not prejudice her interests, while at the same time, as far as the arrangement with that government is concerned, it will protect the interests of

Your obedient servant,

A. G. BENSON.

HON. SECRETARY OF STATE,
Washington, D. C.

NEW YORK, *June 2, 1852.*

SIR: Having recently returned from the Pacific, where, with other shipmasters of our country, I should have proceeded to the islands of Lobos, adjacent to the coast of South America, for a cargo of guano,

where it is to be found, had we possessed the information which I now take the liberty, being about to return, to ask from you as the highest source from which I can obtain the same.

I am informed that no government has any rightful claim to these islands, they never having been enumerated amongst the possessions or dependencies of any of the South American States in defining the extent of their possessions, or have they been held or occupied in any way by any nation, being uninhabited; that the valuable deposit in which they abound may be as rightfully taken by a citizen of the United States as citizen or subject of any country. Unwilling to violate any treaty the government of my own country may have entered into, or any provision of the law of nations, you will oblige me by informing me if, in common with the world, we have a right to take this article of commerce from thence; which information I need hardly add will greatly benefit the ships of our country employed in the trade of the Pacific.

With sentiments of respect, I am your obedient servant,
JAS. C. JEWETT,
Master Barque Philomela.

HON. DANIEL WEBSTER,
Secretary of State of the United States of America.

To which Mr. Webster immediately (June 5, 1852,) replied, as follows:

DEPARTMENT OF STATE,
Washington, June 5, 1852.

SIR: I have to acknowledge the receipt of your letter of the 2d instant, inquiring whether citizens of the United States can take guano from the Lobos islands, which are situated near the coast of Peru, without infringing upon the rights of the citizens or subjects, or government of any other nation.

In reply, I have to inform you that, if those islands should lie within the distance of a marine league from the continent, or if being further than that distance should have been discovered and occupied by Spain or by Peru, the Peruvian government would have a right to exclude therefrom the vessels and citizens of other nations, except upon such conditions as it may think proper to prescribe. There can be no doubt that the title of Peru to the Chinha islands, whence guano is now chiefly taken, is founded upon the basis of discovery and occupancy. That article was taken from those islands and used as a manure by the Peruvians anterior to the conquest of Peru by Spain. It continued to be so taken and used throughout the Spanish dominion in that country, and this practice has been kept up to the present day. Although those islands are uninhabitable, the custom of resorting to them from the neighboring continent for the purpose of procuring guano may be said to have constituted such an occupancy of them as to give to the sovereign of the continent a right of dominion over them under the law of nations.

This department, however, is not aware that the Lobos islands were either discovered or occupied by Spain or Peru, or that the guano on

them has ever been used for manure on the adjacent coast or elsewhere. It is certain that their distance from the continent is five or six times greater than is necessary to make them a dependency thereof pursuant to public law. On the other hand, it is quite probable that Benjamin Morrell, jr., who, as master of the schooner *Wasp*, of New York, visited those islands in September, 1823, may justly claim to have been their discoverer. He gives a full account of them in his narrative, published at New York, in 1832. Under these circumstances it may be considered the duty of this government to protect citizens of the United States who may visit the Lobos islands for the purpose of obtaining guano. This duty will be the more apparent when it is considered that the consumers of Chincha island guano in this country might probably obtain it for half the price they now pay were it not for the charges of the Peruvian government. I shall consequently communicate a copy of this letter to the Secretary of the Navy, and suggest that a vessel-of-war be ordered to repair to the Lobos islands for the purpose of protecting from molestation any of our citizens who may wish to take guano from them.

I am, sir, very respectfully, your obedient servant,

DANIEL WEBSTER.

On the 14th June, 1852, Messrs. Magoun & Son, of Boston, wrote the Secretary of the Navy, (Mr. W. A. Graham,) to which, on the 16th instant, he replied as follows:

NAVY DEPARTMENT,
June 16, 1852.

GENTLEMEN: In reply to your inquiries contained in your letter of the 14th instant relative to the Lobos islands, you are informed that instructions will be sent to Commodore McCauley, commanding the United States squadron in the Pacific ocean, by the first mail steamer, to afford protection to our citizens resorting to those islands to procure guano.

The latitude of the Lobos islands is stated to be nearly $6^{\circ} 59'$ south, and longitude $80^{\circ} 42'$ west, variation $8^{\circ} 45'$ easterly.

I am, very respectfully, your obedient servant,

WILLIAM A. GRAHAM.

Messrs. MAGOUN & SON, *Boston*.

On the 7th June, 1852, Messrs. Magoun & Son wrote the Hon. Daniel Webster, to which he replied as follows:

DEPARTMENT OF STATE,
Washington, June 10, 1852.

GENTLEMEN: I have to acknowledge the receipt of your letter of the 7th instant inquiring whether it would be safe for you to order a ship

of yours, now on the west coast of America, to the Lobos islands for the purpose of taking in a cargo of guano. In reply I have to inform you that it is understood the Navy Department has ordered a vessel-of-war to those islands, for the purpose of protecting such vessels of the United States as may wish to load with guano there.

I am, gentlemen, very respectfully, your obedient servant,
DANIEL WEBSTER.

Messrs. MAGOUN & SON, *Boston.*

On the 7th of July, 1852, Messrs. Dana & Co. wrote the Secretary of the Navy as follows :

WASHINGTON, *July 7, 1852.*

DEAR SIR: Having seen stated in the public journals that a portion of the Pacific fleet had been ordered to the Lobos islands to protect the interests of American ships loading guano there, yet not having seen any official announcement of the above, we take the liberty to ask you if such is the fact, and if American vessels loading guano at the Lobos islands will be protected by our fleet at all hazard.

If you feel at liberty to answer this question, an early reply will much oblige

Your most obedient servants,

DANA & CO.

Hon. WILLIAM A. GRAHAM,
Secretary of the Navy.

To which he (Mr. Graham) replied on the 9th instant as follows :

NAVY DEPARTMENT, *July 9, 1852.*

GENTLEMEN: In reply to yours of the 7th instant, you are informed that instructions have been given by the department to Commodore McCauley to protect our citizens resorting to the Lobos islands to procure guano.

Very respectfully, your obedient servant,

WILLIAM A. GRAHAM.

Messrs. DANA & Co., *Boston.*

In reply to a letter of the Hon. C. F. Cleveland, inquiring in behalf of Mr. A. M. Frink, of New London, the Secretary of the Navy replied as follows :

NAVY DEPARTMENT, *August 22, 1852.*

SIR: In reply to the letter of Mr. A. M. Frink, addressed to you on the subject of the Lobos islands, you are informed that instructions have been given to the commodore of the Pacific squadron to

afford protection to our citizens who may resort to those islands to procure guano.

I am, sir, your very obedient servant.

WILLIAM A. GRAHAM.

Hon. C. F. CLEVELAND.

Other applications, unknown to the undersigned, may have been made to the government for assurances of protection, but the above only appeared in the newspapers of the day.

It is obvious, from the previous correspondence, that the United States government distinctly avowed its purpose, as well as its duty, to protect me and others in resorting to the Lobos islands for the purpose of obtaining guano, and that the assurances were such as to warrant the subsequent measures adopted by the undersigned to make large importations of guano from these islands.

Alexander Denstun, brigadier general of the armies of the republic, well merited of the country in heroic and eminent grade, commander general of the marine and squadron:

I hereby certify that this day arrived in the northern bay of these islands the North American barque "Sarah Chase," Captain John O. Caleb, and he has proved to me, by charter-party from Messrs. Jewett and Benson, that he had to come to these islands to load a cargo of guano, and further to give instructions and assistance to all other vessels freighted by Jewett and Benson, citizens of the United States.

In virtue, and in compliance with the orders of the supreme government, I have notified him that the islands of Lobos belong to, and are the property of, the republic of Peru, and, in consequence of which, by the laws and regulations of Peru, any vessel that attempts to load guano, without express permission from the government, will be immediately made a prize of by the forces under my command, and delivered over to the tribunals of the country to be tried.

I have also shown him the proclamation of the commodore of the United States squadron, Mr. McCauley, dated 18th of October of the present year, in which said commodore warns all owners and captains of vessels chartered by Jewett and Benson, or any others that have such pretension to load guano at the Lobos islands without permission of the government of Peru, that the government of the United States retires all protection from them; in virtue of which, and in conformity with the advice I have given Captain Caleb, he has manifested his intention to direct himself and vessel to the port of Callao, with the object of chartering himself to the Peruvian government, and has left a letter for the vessels that may hereafter arrive at these islands with the object that they follow his example.

Given on board the steamer Rimac, anchored at the "Lobos islands de Afuera," on the 13th of December, 1852.

ALEXANDER DENSTUN.

The above is a true translation of the original document in Spanish.

DANINO FERNANDEZ & CO.

LOBOS ISLANDS,
December 13, 1852.

SIR: I have this day arrived with the bark Sarah Chase. I find neither of the agents at the island, but the Peruvian fleet lying there. I am now on board the steam man-of-war, where I find I cannot carry out the views of the company at the island. I shall proceed immediately to Callao, leaving a letter to be shown to the other vessels chartered by you to proceed also to Callao, where, if there is no agent from the company, I shall procure charters for them, if that will be right, and according to your views. Please write me instructions about disposing of the things on board, and also about my staying at Callao to get off the other vessels you have chartered. The bark J. W. Paige is also off the harbor, and the captain has called on me for his place of destination, which I have given to Callao, as we shall probably arrive there together. The bark is in the offing, not being allowed to anchor, and I have to close my letter in a hurry, but you will receive letters from me as soon as I arrive at Callao. I expect to find letters of instruction from you or Captain Jewett when I arrive there.

Your most obedient servant,

JOHN O. CALEB.

Mr. A. G. BENSON,
Merchant, New York.

P. S. I enclose a copy of a letter left for the vessels you chartered.

LOBOS ISLANDS,
December 13, 1852.

To all captains of vessels calling at these islands chartered by A. G. Benson or James C. Jewett, of New York: As the undersigned is appointed their agent in the absence of the above named J. C. Jewett or A. B. Howe, he requests such captains to proceed at once to Callao, where they will receive a charter from the Peruvian government to load guano for England or the States.

JOHN O. CALEB.

In regard to the vessels chartered by A. G. Benson, for guano.

City and County of New York, ss.

Richard W. Trundy, of said city, merchant, being duly sworn, doth depose and say:

That he was employed by Mr. A. G. Benson, also of said city, merchant, to charter and engage the guano ships taken up in the Atlantic ports of the United States. That he had several interviews with his excellency J. J. de Osma, late minister of Peru, both in this city

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and in Washington, and with the house of Messrs. Barreda & Brother, in Baltimore, on this subject.

That he was in Washington in November last, when the arrangement was made on this subject between the two governments. That he was then requested to state how many vessels other than those previously named to the Department of State he had engaged for Mr. Benson.

That the list hereunto annexed is an exact copy of the original in the handwriting of Mr. Samuel F. Tracy, who handed it to Mr. Benson after his arrival there, and informed him in my presence that the minister had agreed that those vessels should be entitled to the benefits of the arrangement just concluded in his behalf.

And after, in the city of New York, the said minister should have no objections to Mr. Benson's substituting any other vessels in place of those engaged, in case any of these should not perform the voyage. That this assurance was subsequently made by the said minister in New York, in my presence.

That it was understood at that time that as soon as Mr. Benson should endorse his charter-parties to the agent of Peru that an advance of fifty thousand dollars should be made to him, and the same promise was repeated to me by the said minister in New York.

That said Barreda & Brother, in Baltimore, did agree to advance the said Benson, as soon as the charter-parties were duly endorsed to them, the amount before mentioned.

R. W. TRUNDY.

Sworn to before me this 1st of November, A. D. 1853.

In testimony whereof I have hereunto set my hand and af-
[L. S.] fixed my seal of office the day and date above written.

A. F. HIGGINS.

Notary Public.

List of vessels chartered for Lobos islands.

The *Levanter*.
Defiance.
Rolena.
Alexander.
Rhelm.
Element.
Plymouth.
J. & J. Stewart.
Wm. Sprague.
Saxonville.
Anna Kemble.
Duches de Orleans.
Thomas Church.

The *Ozark*.
Old Hickory.
Sylphide.
Elizabeth.
Handee.
Tingqua.
Eagle.
Albus.
St. Mary.
Torrent.
Scargo.
Caroline Tucker.
Roman.
Carrington.

H & I.

Affidavits of J. C. Jewett and R. W. Trundy accompany Mr. Benson's letter to Mr. Marcy of October 18, 1853.

J.

List of vessels and tonnage, accompanies Mr. Clay's despatch, No. 205.

	Register tons.	Carrying capacity.	Charter- party.	Difference.	Amount.
Allioth	329	494	\$13 00	\$7 00	\$3,458 00
Matilda	410	615	16 00	4 00	2,460 00
Z. D.	312	468	16 00	4 00	1,872 00
Berlin	625	937	16 00	4 00	3,748 00
St. Peter	437	656	16 00	4 00	2,624 00
Manchester	570	855	16 00	4 00	3,420 00
Philomela	470	705	16 00	4 00	2,820 00
Java	540	810	14 00	6 00	4,860 00
Sea King	775	1,162	14 00	6 00	6,972 00
Adelaide Metcalf	673	1,010	15 00	5 00	5,050 00
Hampden	646	969	14 00	6 00	5,814 00
Tangler	393	590	14 00	6 00	3,540 00
Arcole	670	1,005	16 00	4 00	4,020 00
Margaret	450	675	14 00	6 00	4,050 00
John Q. Adams	660	990	14 00	6 00	5,940 00
Commonwealth	642	963	14 00	6 00	5,778 00
Lone Star	500	750	13 00	7 00	5,250 00
Golden Era	443	664	16 00	4 00	2,656 00
Sarah Chase	283	425	20 00		
J. W. Paige	200	300	14 00	6 00	1,800 00
Remittance	574	861	16 00	4 00	3,444 00
W. H. Harbeck	872	1,308	16 00	4 00	5,232 00
Realm	547	820	16 00	4 00	3,280 00
Albus	650	975	16 00	4 00	3,900 00
A. M. Lawrence	500	750	17 00	3 00	2,250 00
Element	450	675	17 00	3 00	2,025 00
Alert	764	1,146	16 00	4 00	4,584 00
Olivia	650	975	15 75	4 25	4,143 75
Chimborazo	900	1,350	15 75	4 25	5,737 50
Rechambrant	900	1,350	15 75	4 25	5,737 50
Emma Lincoln	300	450	15 75	4 25	1,912 50
Muscongus	669	1,004	16 00	4 00	4,016 00
Montreal	392	588	16 00	4 00	2,352 00
Paragon	900	1,350	16 00	4 00	5,400 00
N. H. Wolf	449	674	16 00	4 00	2,696 00
St. Andrew	288	432	16 00	4 00	1,728 00
B. L. Harrison	645	967	16 00	4 00	3,868 00
Charles Holmes	792	1,188	16 00	4 00	4,752 00
Henry Harbeck	398	597	16 00	4 00	2,388 00
Colonel Cutts	782	1,173	16 00	4 00	4,692 00
Republic	792	1,188	16 00	4 00	4,752 00
Elvira Harbeck	349	524	16 00	4 00	2,096 00
Plymouth	425	637	16 00	4 00	2,548 00
Ticonderoga	1,072	1,608	16 00	4 00	6,432 00
St. Thomas	714	1,071	16 00	4 00	4,284 00
Esther May	490	735	16 00	4 00	2,940 00
Cyrus	257	385	17 00	3 00	1,155 00
Allen Brooks	464	696	17 00	3 00	2,088 00

LIST—Continued.

	Register tons.	Carrying capacity.	Charter- party.	Difference.	Amount.
Emily Taylor	387	580	\$18 00	\$2 00	\$1,160 00
Tartar	380	570	18 00	2 00	1,140 00
Defiance	1,690	2,535	16 00	4 00	10,140 00
Northern Crown	1,380	2,070	16 00	4 00	8,280 00
Robena	750	1,125	17 00	3 00	3,375 00
Bolivia	1,650	2,475	16 00	4 00	9,900 00
Zenobia	610	915	16 00	4 00	3,660 00
Sacsum	400	600	16 00	4 00	2,400 00
Helen Francis	340	510	16 00	4 00	2,040 00
Albatros	900	1,350	16 00	4 00	5,400 00
Golden Age	300	450	16 00	4 00	1,800 00
William Frothingham	840	1,260	16 00	4 00	5,040 00
Giance	600	900	15 00	5 00	4,500 00
Ascutna	490	735	16 00	4 00	2,940 00
Fides	700	1,050	16 00	4 00	4,200 00
Sylphide	374	561	15 00	5 00	2,805 00
Duchess d'Orleans	900	1,350	17 00	3 00	4,050 00
	39,704	59,556			249,395 25
Add premium for Spanish dollars, 10 per cent.....					24,939 51
					274,334 76

NEW YORK, November 7, 1853.

SIR: Absence from the city has prevented my answering sooner your several inquiries of the 31st ultimo.

The annexed list of vessels is a true copy of the one in my handwriting handed to you in Washington at the time of the settlement of the Lobos island question in November last, it being a duplicate of that handed by me to the Peruvian minister. He perfectly understood that the charter parties for many of the vessels on that list had not at that time been signed by you, but he agreed that they should be considered as entitled to the benefits of the arrangement.

I stated to him that, in consequence of the proclamation of Commodore McCauley, it was feared by you that some of the vessels would not go to the islands. The minister replied, that there would be no difficulty in substituting other vessels in the place of such. Mr. de Osma afterwards, in this city, assured me that, if the United States government should ask it, he would agree on a stipulated number of tons to be loaded at the Chincha islands under the said arrangement.

But, after said request had been made to him, he said that, upon further reflection, he had concluded to submit the matter to his government; that it was the identical proposition he had proposed pending the negotiation; that he would recommend it to his government; that there could be little doubt of its being granted; and that a delay of sixty or ninety days would make no difference to you.

I have the best of reasons for believing that such authority was afterwards given by the Peruvian government to its representative in this country.

c

Mr. de Osma engaged to request the agents for the guano of Peru in Baltimore to make you an advance, on delivery to them of your charter-parties duly endorsed. He distinctly stated that he did not think there could be any difficulty about the required advance.

Your most obedient servant,

SAMUEL F. TRACY.

A. G. BENSON, Esq., *Present*.

Copy of a paper handed to Mr. Benson, at Washington, in November, 1852.

List of vessels chartered for Lobos islands.

The Levanter.
 The Defiance.
 The Rolena, (should have been Robena.)
 The Alexander.
 The Rhelm, (should have been Realm.)
 The Element.
 The Plymouth.
 The J. and J. Stewart.
 The William Sprague.
 The Saxonville.
 The Anna Kemble.
 The Albus.
 The St. Mary.
 The Torrent.
 The Seargo, (Scargo.)
 The Caroline Tucker.
 The Roman.
 The Carrington.
 The Duches de Orleans, (should have been Duchesse d'Orleans.)
 The Thomas Church.
 The Ozark.
 The Old Hickory.
 The Sylphide.
 The Elizabeth.
 The Handee, (should have been Haüdee.)
 The Tingus.
 The Eagle.

Mr. Benson to Mr. Mann.

NEW YORK, November 22, 1853.

SIR: I beg to request that the statement I had the honor to submit to the consideration of the Department of State may not be transmitted to Peru until the duplicate, now being prepared, is presented to the department.

The subject being one of some magnitude, (at least to me,) it has occurred to me that the strictest accuracy should be regarded, and there might be some slight verbal differences in the rough copy and the one you have; and, besides this, it would seem to me that the more this subject is examined the more necessary it will appear to have the papers transmitted with such a sanction of government influence as a special messenger would necessarily give it.

Your obedient servant,

A. G. BENSON.

Hon. DUDLEY MANN,
Assistant Secretary of State, Washington, D. C.

Mr. Benson to Mr. Marcy.

NEW YORK, *March 9, 1854.*

SIR: A suit has been instituted against me for an alleged violation of charter-party in not loading certain ships at the Lobos islands, and my counsel have advised that it is necessary for my defence to produce the authority of the government of the United States to load them there, and also an official copy of the arrangement entered into on the 16th and 17th of November, 1852, between the governments of Peru and the United States.

I have the first but not the last named papers, which, if there is no State objection thereto, I beg you will direct to be transmitted.

Your obedient servant,

A. G. BENSON.

Hon. WM. L. MARCY,
Secretary of State, Washington, D. C.

Mr. Marcy to Mr. Benson.

DEPARTMENT OF STATE,
Washington, March 15, 1854.

SIR: In compliance, partially, with the request contained in your letter of the 9th instant, I enclose, herewith, a copy of so much of the translation of Mr. Osma's note of the 17th November, 1852, to this department as embraces the arrangement under which a certain class of United States merchant vessels were to be permitted to load guano at the Lobos islands. The note of this department of the 16th November to Mr. de Osma is not transmitted according to your request, inasmuch as it is an argument on the general merits of the Lobos controversy, and embraces no facts having reference to the interests of individuals.

I am, sir, respectfully, your obedient servant,

W. L. MARCY.

A. G. BENSON, Esq., *New York.*

Mr Benson to Mr. Marcy.

NEW YORK, December 9, 1854.

SIR: The undersigned begs leave again most respectfully to call the attention of the Hon. Secretary of State to the Lobos question, and to remind him that in the summer of 1853 he had the honor to make to him a verbal statement of his connexion therewith, and the great injustice which had been done him.

The Hon. Secretary was then understood to reply in substance as follows:

MR. BENSON: I have not yet had time to examine this subject, but will give it my early attention. I have not yet made up my mind whether Mr. Webster's views were right or wrong.

Subsequently the undersigned was introduced to the President of the United States by a Mr. Thomas J. Whipple, and in the autumn of the same year he again called upon the President, introduced by a Mr. Uri Lamprey, of New Hampshire, for the purpose of a further conversation with him on the same subject, but the interview was cut short by the President as follows:

It is wholly unnecessary for *you* to make any statement or to call on me again on this subject, for I have heard about it and am satisfied you have been treated very unjustly, and I can assure you that all which this government can rightly do to redress your wrongs shall be done; and referring the undersigned to the Hon. Secretary of State, to whom he had already spoken and would speak again on this subject, he was dismissed.

Soon after this interview the undersigned called again upon the Hon. Secretary of State and requested a hearing upon this subject, but the Secretary was so engrossed with other pressing engagements that he could not give it his personal attention. He, however, introduced the undersigned personally to the Assistant Secretary of State, Mr. Mann, and requested him to give the case his earliest attention. The Assistant Secretary of State gave the undersigned an immediate opportunity, verbally, to make his statement, to which he replied as follows: "Reduce your statement to writing and address it to this department, and it shall be immediately sent to our minister near the government of Peru, Mr. Clay, with instructions to have the claim settled, and as soon as anything is done you shall be immediately advised of it." In pursuance of said intimation, the undersigned submitted to the Department of State the letter of 15th November, 1853, and since then, from the assurances given, has confidently waited for a favorable reply thereto; but up to this time, from the intimations of the President before mentioned, he has not felt at liberty again to address the government on the subject, and he now submits the following brief statement as his apology for doing so in the present instance.

The Hon. Uri Lamprey, before mentioned, came very highly accredited to this city as the personal and political friend of the President of the United States, and as such became acquainted with quite a number of the leading men of New York having business at Wash-

ington. He was introduced to the undersigned in such a way as not to admit of a doubt of his influence; accordingly his valuable services were immediately secured. Not long afterwards he desired the undersigned to use his influence to obtain for his only son (a young man of about twenty years of age) a situation in some good firm doing business in this city, for which purpose he came here in the summer of 1853, and with the further request that he might be allowed temporarily to stop at the house of the undersigned, which was readily granted, and soon afterward a most desirable situation was secured.

Early in the winter of that year the undersigned was compelled to turn this only son out of doors, for improprieties of behavior too indecent to commit to paper, and his two boys (16 and 18 years old) gave him a severe cowhiding in the public streets.

Immediately after this, it was reported to the undersigned that the Lampreys, both father and son, had threatened to send the guano claim to * * * * unless satisfactory reparation was made for the aforesaid indignity, to which the undersigned replied in substance as follows :

"So far from making any apology, I have only to say that, if my boys had not whipped him I would have done it, even if he had been the only son of the President himself."

The undersigned was subsequently waited upon at his office in New York by Mr. Thomas J. Whipple, Mr. Lamprey's friend, also of New Hampshire, who, in answer to the inquires of the undersigned as to the prospects of his guano claim, said that "the time had gone by to do anything with it."

The undersigned cannot for one moment suppose that, wittingly, either the President of the United States or any one of his cabinet officers could be diverted from attending to the just claims of any citizen, while at the same time taking into consideration the high assurances given at the outset, that every thing which could, should be done in his behalf and the earliest notice given him thereof.

The threats of the Lampreys and the remark of Mr. Whipple, coupled with the fact, that for more than one year he has had no official intelligence from his government on the subject, his fears have been aroused that by some process the mind of the President, if not the Secretary of State, has been poisoned.

Here it may be proper to state that the undersigned, placing full confidence in the declarations of the government of the United States that American vessels resorting to the Lobos islands for cargoes of guano would be protected in so doing, obligated himself to pay the port charges and load his ships at said islands within a given number of lay days after their arrival there; and the honorable Secretary of State will not fail to notice, that if the government of Peru had desired to carry out in good faith the stipulations contained in the arrangement of November 17, 1852, it had only to instruct its agents at Lobos and elsewhere to inform the masters of ships chartered by the undersigned, that the government of Peru had assumed and would execute all such charter-parties, as to lay days and port charges in Peru, and would pay the undersigned twenty *silver* dollars a ton,

freight, on the proper discharge of their several cargoes in the United States, and would have taken and paid for the outfits of the barque Sarah Chase; but on the contrary, the undersigned is compelled to state, that the agents of Peru in the Atlantic chartered ships which they knew were previously engaged to him. The Pacific agents did the same, and the consul at San Francisco informed the captains of ships bound to Lobos islands that their owners, not the undersigned, would receive the twenty dollars a ton freight; and finally, the home government, instead of saying to the captains of ships chartered by him, that they would be loaded at the Chincha islands according to their charter-parties and the arrangement made between the two governments, and that the government of Peru would pay their port charges and demurrage, if any, otherwise they would not be permitted to load in the kingdom of Peru at all, preserved a profound silence on this point; but, having raised the price of freights from thirteen to some twenty dollars a ton, took especial pains to inform such captains that if, from any cause, they chose to consider their charters with the undersigned violated, then, of course, they stood ready to load them.

Under such influences it will not be considered strange that some chose to avail themselves of the offers presented; and that all did not do so is to be attributed solely to the powerful influence of the Hon. John R. Clay, assisted by the agent of the undersigned, Captain John O. Caleb.

The government of Peru did not receive at the Lobos islands the men and outfits composing the expedition sent out there by the undersigned in the barque Sarah Chase, but ordered her captain to proceed with them to Callao. She consequently went to that port; but the government not only did not receive the articles for a long time after her arrival there, and when finally they were taken in the government warehouses, they refused to pay for them, and have not done so to this date according to appraisal. The barque Sarah Chase was detained after her arrival at Lobos more than four months before she was despatched for the United States, and they refuse to pay anything for said detention.

The undersigned, in conclusion, begs to request, inasmuch as the government of Peru has in no one case paid the twenty silver dollars a ton freight, as stipulated in the agreement of November 17, before mentioned, and has not executed his charter-parties as to lay days and demurrage, and has not paid for the outfits sent out by the Sarah Chase, nor for her detention, and refuses to account at all for a large number of his ships, that the government of the United States will interpose in his behalf.

Very respectfully, your obedient servant,

A. G. BENSON.

Hon. W. L. MARCY,
Secretary of State, Washington, D. C.

Mr. Marcy to Mr. Benson.

DEPARTMENT OF STATE,
Washington, December 15, 1854.

SIR: I have to acknowledge the receipt of your letter of the 9th instant, relating to your claim against Peru for the alleged failure of her agents in the United States to fulfil their contract with you, in the matter of the shipment of guano from the Lobos and Chinchas islands on your vessels.

On the 23d November, 1853, the department transmitted to Mr. Clay, at Lima, the whole of the voluminous correspondence accompanying your memorial to this office of the 15th of the same month. From the instruction to Mr. Clay upon the subject, I quote here the following paragraphs:

"Your knowledge of the complications involved in these transactions, and indeed of the whole case, from its inception to this moment, are considerations which have induced the reference of this claim to your management.

"The department cannot, with the information it possesses, express an intelligent opinion upon the justice of Mr. Benson's claim. The government of the United States looks to Peru for the faithful fulfilment of the agreement of November; that agreement was explicit and decisive, and Mr. Benson is justly entitled to all the advantages conceded by it."

You will perceive that the tone of this instruction is just and impartial; and in entrusting the business to Mr. Clay's judicious management, the department was actuated solely by the wish that your claim should be examined with that fairness and candor which it was confident Mr. Clay would scrupulously exercise, and with that light which his very intimate acquaintance with the whole history of the guano business would throw upon the case. Accordingly, he has devoted much time to the discharge of this delicate duty, and has come to the conclusion that in no material respect has the government of Peru, or its agents, failed to comply with the terms of engagement, either as between the two governments or between that government and yourself.

The item of liability which you allege for the balance of the value of the cargo of the "Sarah Chase" is due you, Mr. Clay thinks, to the amount of \$1,175 45, provided it can be shown that the custom-house certificate was erroneous; and in that event the department will press an admission of the claim.

Whatever may have been your damages in consequence of the failure of the Barreda Brothers to comply with their verbal promise to advance you fifty thousand dollars, this government cannot be expected to demand redress in your behalf, which you must seek at the legal tribunals.

The department does not feel called upon to justify itself from imputations of being influenced in its official action by the allegations of any parties, who, impelled by personal or sinister motives, may seem disposed to interfere with the transaction of its business. But as you state very positively that Mr. Uri Lamprey, and his friend Mr.

Whipple, had intimated to you their intention of prejudicing the department in the matter of your claim, I think it proper to observe to you that no such effort has been made by any persons; and that the department has received no other information in the premises than from official sources.

Should you think it necessary to be furnished with a copy of Mr. Clay's report upon the subject of your claim, it will be furnished to you, although, as the department is occupied with urgent duties, the expense of making the transcript will be chargeable to you.

I am, sir, &c.,

W. L. MARCY.

A. G. BENSON, Esq., *New York.*

Captain Jewett to Mr. Marcy.

NEW YORK, *March 20, 1855.*

SIR: I beg leave to call to your attention the annexed certified copy of the copartnership agreement between A. G. Benson and myself in the guano expedition to the Lobos islands.

Such copartnership having terminated, all sums of money that may be received on account of or may be due to us, either from the government of Peru or the United States, in this matter, are payable only to the joint order or upon the joint receipt of each of the parties composing the late copartnership.

The government of Peru not having yet completed with the United States its stipulations as set forth at the time of the settlement of the above named guano expedition, and the undersigned having received no intelligence relative thereto since representing in person some time since at the State Department to the honorable Secretary the facts of this non-compliance upon the part of that government to carry out with my partner and myself those stipulations, and praying the interposition of our government in our behalf, I have to ask at this time from the honorable Secretary for information as to the prospect of our obtaining the rights yet belonging to us under the aforesaid agreement of the government of Peru, as has been set forth to the department, and whether our government has taken any steps in the matter in our behalf.

I have the honor to be your obedient servant,

JAS. C. JEWETT.

Hon. WM. L. MARCY,

Secretary of State of the United States.

Memorandum of an agreement made this 24th day of May, 1853, between James C. Jewett and Alfred G. Benson, for the purpose of defining their mutual and respective interests in the guano expedition, and their relative rights as copartners in all the charters of the vessels, the arrangement between the governments of the United States and Peru, the moneys received or to be received on account thereof, and the liabilities therein.

The said parties do declare and agree as follows, that is to say :

Said Benson and Jewett are copartners in the said business matters, and the interest of each of the parties therein is equal, and their liabilities therein are also equal ; and each party is entitled to one half of all the proceeds thereof, and is bound to pay one half of all the debts therefor ; and neither party is authorized to sign any further agreement, incur any further liabilities, or conclude any further negotiations, without the consent of the other.

All moneys heretofore received, or hereafter to be received, from the Peruvian government or their agents, or any other party or parties, on behalf of the expedition or charters of vessels, or any matter connected therewith, shall be paid to and collected by A. G. Benson, who shall immediately on the receipt thereof pay over the one half of all and every sum of money so received by him from time to time, as each sum is received, to the order of James C. Jewett, without any deduction by way of commissions or otherwise, except such commissions as are hereinafter and in the annexed schedule provided for.

The mutual liabilities of the parties are declared to be equal and even, and the liabilities in the annexed schedule stated are to be paid as therein provided ; but no payment of any sum of money whatever shall be made by either party without the consent of the other.

A. G. BENSON. [SEAL.]
JAS. C. JEWETT. [SEAL.]

In presence of—

W. C. PRIME.

CITY AND COUNTY OF NEW YORK, ss.

I, Gilbert S. Nixon, a commissioner of deeds in and for the city and county of New York, duly commissioned and sworn, do hereby certify that I have carefully compared the foregoing agreement with the original, and find it a true copy of said original.

Witness my hand this 20th March, 1855.

GILBERT S. NIXON,
Commissioner of Deeds.

Messrs. Dana & Co. to Mr. Marcy.

Boston, April 6, 1855.

SIR: The undersigned have the honor to represent, that in the year 1852, relying on the guarantied protection of the government of the

United States, they ordered their ship "Michael Angelo" to the Lobos islands for the purpose of procuring there a cargo of guano.

The honorable Secretary will find on the files of the Department of State sundry communications from the undersigned to his predecessors in office, bearing dates of October 1 and 2, November 13 and 23, and December 1, 1852, to which the undersigned respectfully ask reference, in order that the relations between the government and themselves may be fully understood. They also ask reference to their letter of the 7th of July, 1852, to the honorable the Secretary of the Navy, and to his reply to the same, bearing date of the 9th of that month, conveying to the undersigned the assurance that Commodore McCauley had orders to protect American citizens resorting to the Lobos islands to procure guano.

The Michael Angelo, in common with other vessels which had been ordered to these islands, was forced to abandon that voyage in consequence of the subsequent and summary withdrawal of the guarantee of the government, and was obliged to proceed to Callao, and thence to the Chincha islands, where she received and took on board, for account of the Peruvian government, an incomplete cargo of guano, the freight of which was at the rate of sixteen dollars per ton.

The terms of the convention, which was concluded in November, 1852, by your predecessor, the Hon. Edward Everett, and Señor Osma, the envoy extraordinary from Peru, were known at the Chincha islands before the Michael Angelo had completed loading; and the Peruvian superintendent there knowing her to be one of the *bona fide* Lobos vessels, and that she would be entitled by the terms of the above named convention to receive a higher rate of freight than that at which she had been chartered, refused to give her a full cargo; and although her captain protested against this injustice, he was finally obliged to sail with one hundred tons less of guano than he could and would have taken.

Independent of the just claim which the undersigned believe they have against their own government for damages resulting from the withdrawal of its promised protection, they consider that they have an equally just one for two thousand dollars against the government of Peru, this sum being the amount they would have received for freight on one hundred tons of guano, had the captain of the Michael Angelo been permitted to load a full cargo.

The undersigned have hitherto preferred to press their demand against the government of Peru through their agent at Lima, rather than to occupy the time and invoke the aid of the honorable Secretary of State in a matter of comparative limited importance to all but themselves; but as their agent has thus far been unsuccessful in his appeals to the Peruvian government, they feel constrained by a sense of duty to their own interests to avail of the proper channel of redress to call the attention of the honorable Secretary to this matter, and to claim his influence in the settlement of the same.

With the assurance of their high regard and consideration, the undersigned have the honor to be, &c.,

DANA & CO.

Hon. WM. L. MARCY,
Secretary of State, Washington.

Mr. Marcy to Messrs. Dana & Co.

DEPARTMENT OF STATE,
Washington, April 13, 1855.

GENTLEMEN: I have to acknowledge the receipt of your letter of the 6th instant, respecting the claim which you present against the government of Peru, in consequence of the failure of the agents of that republic to supply the ship "Michael Angelo" with a full cargo of guano at the Lobos islands, in accordance with the terms of the agreement entered into between this department and the representative of Peru on the 17th November, 1852.

Mr. Clay, the minister of the United States in Lima, will be instructed to learn from that government the grounds upon which the "Angelo" was refused her cargo; and if it should appear that the stipulations of the compact referred to have been violated, proper representations will be made to that government.

I am, gentlemen, very respectfully, &c.,

W. L. MARCY.

Messrs. DANA & Co.,
Boston.

Mr. Benson to Mr. Marcy.

WASHINGTON, April 6, 1855.

SIR: The undersigned has presented for your consideration certain claims against the government of Peru, founded upon a strict construction of Mr. Osma's stipulations contained in his letter of November 17, 1852.

The undersigned has certain other claims against the Peruvian government which he conceives to come clearly within the spirit of the arrangement made between Mr. Everett and Mr. Osma, and which, in his apprehension, should receive the favorable consideration of a government not disposed to entrench itself behind the technicalities of a commercial bond, but which has a due regard to the broad and liberal intent of a convention with a friendly power.

The object of the arrangement into which, in the spirit of conciliation, Mr. Osma, the Peruvian minister, entered, was to protect from actual loss those citizens of the United States who, on the faith of the protection of their government, had actually and *bona fide* engaged in the expedition to the Lobos islands, to the extent of the engagements which they had already completed, and of the operations to which they were committed beyond the possibility of retreat.

The arrangement was intended to be liberal, and proportionate to the immense losses of those who had been defeated in the purposes of the expedition in consequence of the change of policy of the government of the United States, and proportionate in some measure to the vast benefit which Peru derived from the abandonment by our government of its former policy.

Mr. Osma agreed to freight the vessels which had left the United States before the 25th of August, A. D. 1852. This date was fixed upon evidently for the reason that, as Mr. Webster's letter of the 21st of August was then generally known, some other disposition could have been made of the vessels which had not sailed, so as to save the owners and charterers from loss.

But, in fact, the literal compliance of the undersigned with the arrangement or convention between Mr. Osma and Mr. Everett, made without consultation with him, was insufficient to protect him. The undersigned had made engagements from which it was impossible for him to recede. He had chartered vessels, thus placing himself under heavy pecuniary liabilities. They had received, in whole or in part, their cargoes. They were in the course of preparation, and some of them almost ready for their voyage; but they did not actually sail before the 25th of August. For these vessels the undersigned was responsible. He had engaged to despatch them, and nothing remained for him but to fulfil his engagements.

Moreover, these vessels were accepted by the agents of the Peruvian government as coming under the arrangements referred to, and were freighted by them with guano. They, therefore, in effect, waived the literal compliance with the arrangement, and are precluded from refusing to the undersigned the consideration expressed in it, after having received the benefit which accrued from the freighting of the vessels.

The undersigned therefore conceives that the spirit and manifest intent of the letter of Mr. Osma, as well as the subsequent action of the Peruvian agents, require that these vessels should be included in the list of those for the freight of which twenty hard dollars were to be paid. He presents a list of these vessels, (marked "A,") and his account against the Peruvian government for their freight—they all having sailed and returned with cargoes under his charter-parties, and having been accepted as coming under the arrangement by the agents of the government at Peru.

The undersigned also conceives that the intent of Mr. Osma's arrangement was that his vessels in freighting guano from the Chincha islands should be placed in as favorable circumstances as if the guano were freighted from the Lobos islands.

But the vessels destined for the Labos islands were detained in consequence of not being able to obtain guano there, and they became subject to heavy charges in consequence of their going from thence to Callao, in violation of their charter-parties. The undersigned has, therefore, presented an account for demurrage covering these increased expenses, and some of which he has been compelled to pay.

There is another consideration to which the undersigned would refer as establishing his equitable claim against the Peruvian government for the full freight of twenty dollars per ton and the demurrage which he has charged, which is, that the prices of freight for guano paid by the Peruvian government were much less than they would have been but for the vessels which were despatched by the undersigned. Before these vessels had discharged their cargoes in the United States the price of freight of guano from the Chincha islands

had risen to thirty dollars per ton. It is manifest that the Peruvian government was a large gainer in consequence of the despatching of these vessels, even though the full freight of twenty dollars per ton were paid for them.

The undersigned presents another claim against the Peruvian government, founded upon the express stipulations of the Peruvian minister, and, to sustain it, submits the affidavit of R. W. Trundy, who furnishes a list of vessels other than those previously named to the Department of State, which he had engaged for the undersigned. He says: "Hereunto annexed is an exact copy of the original in the handwriting of Mr. Samuel F. Tracy, who handed it to Mr. Benson after his arrival there, (at Washington,) and informed him, in my presence, that the minister had agreed that those vessels should be entitled to the benefits of the arrangement just concluded in his behalf. And after, in the city of New York, the said minister said he should have no objection to Mr. B.'s substituting any other vessels in place of those engaged, in case any of those should not perform the voyage; that this assurance was subsequently made by the said minister in New York in my presence."

This list was prepared very hastily, as both Mr. Everett and Mr. Osma were urgent that arrangements should be immediately concluded, and was necessarily imperfect, as the undersigned was not present to correct it. The undersigned claims that, under this last arrangement, as proved by Mr. Trundy, he is entitled to the freight of twenty hard dollars per ton on such vessels as were chartered or engaged by him, and which did in fact load at the Chincha islands, provided their number did not exceed that of Mr. Trundy's list.

Under this last mentioned stipulation, the undersigned claims the freight of twenty hard dollars per ton on twelve vessels (giving credit for the average rate of freight paid) mentioned in the account annexed, marked (B). All the vessels enumerated in this account were engaged or chartered by the undersigned or his agents, and were loaded with guano by the Peruvian government. That government obtained these vessels to freight with guano from the Chincha islands in consequence of the exertions of the undersigned. This claim, therefore, is not one for damages, but is founded upon a value received by Peru.

The undersigned conceives that he might properly present a claim for the whole number of twenty-four vessels, which the minister agreed to include in the arrangement, inasmuch as but for the interference of the Peruvian agents and their efforts, which were but too successful, to embarrass his operations, and to prevent his completing his contracts with the other vessels, the whole number would have prosecuted their voyage and obtained freights of guano. But he is willing to confine himself to those which he deems to come fairly and without question within the scope and intent of the arrangement for which the consideration has actually been received by Peru, and in relation to which his own part of the arrangement was carried out. He forbears to urge the last mentioned claim, however well founded it may be in justice and equity. He simply suggests it to the consideration of the

department to be presented or not at its sound judgment and discretion.

The undersigned begs leave to recapitulate the claims which he desires the government of the United States to demand payment of from Peru :

1. A claim founded upon the strict construction of Mr. Osma's letter of November 17, 1852, which has been examined at the Department of State, for.....	
2. A claim for freight on five ships, to wit: the A. M. Lawrence, Realm, Element, Alert, and Albus.....	\$26,188 29
3. Claim for demurrage for detention of vessels and not loading according to charter-party, (amount not fully ascertained,) ascertained amount.....	13,235 81
4. Claim for freight on twelve vessels, founded on Mr. Osma's stipulations to Trundy and Tracy.....	83,442 31
	<hr/>

I have the honor to be, your obedient servant,

A. G. BENSON.

Hon. W. L. MARCY,
Secretary of State.

—
“ A.”

List of five vessels which sailed for Lobos and returned from Chincha loaded with guano :

Ships A. M. Lawrence, Realm, Element, Alert, and Albus.

Peruvian government in account with A. G. Benson, for freight on guano, per ship A. M. Lawrence.

To freight of 768 tons, 15 cwt., 0 qr., 27 lbs. of guano, discharged from ship A. M. Lawrence, December 16, 1853, at 20 (silver) dollars a ton, is.....	\$15,375 25	
Add premium on silver dollar, 10 per cent	1,537 52	
	<hr/>	\$16,912 77
Credit by amount of freight as per charter party on 768 tons, 15 cwt., 0 qr. 27 lbs., at \$17 per ton.....		13,068 97
		<hr/>
		3,843 80
Interest on \$3,843 80 from December 16, 1853, until April 21, 1855, (16 months 5 days).....		310 71
		<hr/>
		4,154 51
		<hr/>

E. & O. E.

NEW YORK, April 21, 1855.

Rep. Com. 397—18

Peruvian government in account with A. G. Benson, for freight of guano, per ship Realm.

To freight of 850 tons of guano discharged from ship Realm, February 5, 1854, at 20 (silver) dollars a ton, is	\$17,000 00
At premium on silver dollar, 10 per cent.....	1,700 00
	<hr/>
	18,700 00
Credit by amount of freight as per charter-party, on 850 tons, at \$16 per ton.....	13,600 00
	<hr/>
	5,100 00
Interest on \$5,100 from February 5, 1854, until April April 21, 1855, (14 months, 16 days).....	370 60
	<hr/>
	5,470 60
	<hr/>

E. & O. E.

NEW YORK, *April* 21, 1855.

Peruvian government in account with A. G. Benson for freight on guano per ship "Element."

To freight of 720 tons 12 hundred weight 13 pounds of guano, discharged from ship Element February 21, 1853, at 20 (silver) dollars a ton, is	\$14,412 11
Add premium on silver dollar, 10 per cent.....	1,441 21
	<hr/>
	15,853 32
Credit by amount of freight as per charter-party, on 720 tons 12 hundred weight 13 pounds, at \$17 per ton	12,250 32
	<hr/>
	3,603 00
Interest on \$3,603 03, from February 21, 1853, until April 21, 1855, 14 months.....	252 2
	<hr/>
	3,855 2
	<hr/>

E. & O. E.

NEW YORK, *April* 21, 1855.

Peruvian government in account with A. G. Benson for freight on guano per "Alert."

To freight of 1,146 tons of guano, discharged in United States, from ship Alert, May 3, 1854, at 20 (silver) dollars a ton, is.....	\$22,920 00
Add premium on silver dollar, 10 per cent.....	2,292 00
	<hr/>
	25,212 00
Credit by amount of freight as per charter party, on 1,146 tons at \$16 per ton.....	18,336 00
	<hr/>
	6,876 00
Interest on \$6,876 from May 3, 1854, to April 21, 1855, 11 months 18 days.....	398 79
	<hr/>
	7,274 79
	<hr/> <hr/>

E. & O. E.

NEW YORK, *April* 21, 1855.

Peruvian government in account with A. G. Benson for freight of guano per ship Albus.

To freight of 857 tons 10 hundred weight 2 quarters 5 pounds of guano, discharged in United States, from ship Albus, May 21, 1854, at 20 (silver) dollars a ton, is.....	\$17,150 54
Add premium on silver dollar, 10 per cent.....	1,715 05
	<hr/>
	18,865 59
Credit by amount of freight as per charter party on 857 tons, 10 hundred weight 2 quarters 5 pounds at \$16 per ton.....	13,720 43
	<hr/>
	5,145 16
Interest on \$5,145 16 from May 21, 1854, until April 21, 1855, 11 months.....	282 98
	<hr/>
	5,428 14
	<hr/> <hr/>

E. & O. E.

NEW YORK, *April* 21, 1855.

The Peruvian government in account with A. G. Benson for the following vessels, as per list annexed, or their substitutes, as agreed upon by Señor J. J. de Osma to be taken, all of which were engaged or chartered by me, and have returned to the United States loaded with guano.

To ship <i>Fides</i>	600	registered tons.
“ <i>Duchess d’Orleans</i>	756	“
“ <i>St. Lawrence</i>	686	“
“ <i>Northern Crown</i>	1,380	“
“ <i>Hopewell</i>	686	“
“ <i>Esther May</i>	490	“
“ <i>Chimborazo</i>	900	“
“ <i>Helen & Francis</i>	340	“
“ <i>Golden Age</i>	400	“
“ <i>Glance</i>	600	“
“ <i>St. Thomas</i>	714	“
	<hr/> 7,552	“
At 1½ tons for carrying capacity	11,328	
To ship <i>Levanter</i> , discharged	961	
	<hr/> 12,289	tons.
At 20 (silver) dollars a ton, is	\$245,780	00
Add premium on silver dollar, 10 per cent.	24,578	00
	<hr/> 270,358	00
Credit by amount of (average) rate of freight as per charter-parties of vessels sent and accepted by the Peruvian government on 12,289 tons, at \$15 21 per ton	186,915	69
	<hr/> 83,442	31
	<hr/> <hr/>	

E. & O. E.

Peruvian government to A. G. Benson, for demurrage, &c., by their not loading the following ships according to his charter-parties. DR.

Paid ship <i>Albus</i> , May 19th, 1854	\$2,429	13
Interest to April 21, 1855, (11 months 2 days)	134	41
	<hr/> 2,563	54
	<hr/> <hr/>	
Paid ship <i>Manchester</i> , January 31, 1854	1,398	50
Interest to April 21, 1855, (14 months 20 days)	102	56
	<hr/> 1,500	06
	<hr/> <hr/>	

(In suit.) Ship <i>John Q. Adams</i> , August 10, 1853.....	\$2,974 00
Interest to April 21, 1855, (20 months 11 days).....	302 85
	<hr/> 3,276 85 <hr/>

(In suit.) Ship <i>Matilda</i> , November 21, 1853	\$2,435 00
Interest to April 21, 1855, (17 months).....	206 97
	<hr/> 2,641 97 <hr/>

(In suit.) Bark <i>J. W. Paige</i> , May 29, 1853.....	\$2,920 00
Interest to April 21, 1855, (22 months 23 days,)	332 39
	<hr/> 3,252 39 <hr/>

(Unascertained.) Ship *Arcole*.
 “ *Z. D.*
 “ *Bark Tangier*.
 “ *Ship Commonwealth*.

(In suit.) Ship *Lone Star*.

(Unascertained.) Ship *St. Peter*.

(Unsettled.) Ship *Defiance*.

(Unascertained.) Ship *Margaret*.
 “ *Bark Philomela*.
 “ *Ship Adelaide Metcalf*.
 “ *Ship Sea King*.
 “ *Bark Golden Era*.

(In suit.) Bark *Allioth*.

(Unascertained.) Ship *William H. Harbeck*.
 “ *Ship Hampden*.
 “ *Ship A. M. Lawrence*.
 “ *Ship Realm*.
 “ *Ship Berlin*.
 “ *Ship Element*.
 “ *Ship Alert*.
 “ *Ship Remittance*.

These bills, some paid and in suit, as above, and others waiting the result of said suits, have arisen from the fact that said ships were detained, and incurred expenses in going from Lobos islands to Callao contrary to their charter parties with me.

Copy of Tracy's list.

Ship *Levanter*.
 Ship *Defiance*.
 Ship *Robena*.
 Ship *Alexander*.
 Ship *Realm*.

Ship Element.
 Ship Plymouth.
 Ship J. & J. Stuart.
 Ship William Sprague.
 Ship Saxonville.
 Ship Anna Kemble.
 Ship Duchess d'Orleans.
 Ship Thomas Church.
 Ship Ozark.
 Ship Old Hickory.
 Ship Sylphide.
 Ship Elizabeth.
 Ship Haüdee.
 Ship Tonggua.
 Ship Eagle.
 Ship Albus.
 Ship St. Mary.
 Ship Torrent.
 Ship Scargo.
 Ship Caroline Tucker.
 Ship Roman.
 Ship Carrington.

Messrs. Barreda and Brother to Mr. Marcy.—Enclosures.

BALTIMORE, April 24, 1855.

SIR: In reference to Mr. Benson's claim we beg to state that the agreement of 8th January, 1853, between ourselves and Mr. Benson is considered by us a private one, we having entered into it in our individual capacities as merchants, for the purpose of carrying on the views of the Peruvian government. The only interference that the Peruvian minister at Washington had in the matter was to give us authority to allow to those vessels chartered by Mr. Benson to proceed to Chinha islands from other ports, waiving the necessity of sending them to Callao, as we were then bound to do with all those (bound) chartered by us. This deviation from our authority made it necessary for our own protection to refer in the agreement with Benson to the instructions received from his excellency Mr. Osma. Nor could we have taken up and loaded Mr. Benson's vessels had we not been invested with the character of "agents" for the exportation and sale of Peruvian guano in this country. This explains sufficiently to our mind the use made of the word "agents," which cannot mean in our case but consignees, and the reference made to the instructions received from Mr. Osma authority to deviate from the custom-house regulations of Peru. Mr. Benson was well aware of the capacity under which we entered into the agreement above referred to, and he, in several instances during the discussion of the same, expressed his satisfaction at "not having any more to do with government" on the subject.

The above plainly shows that, our agreement having been a private

one, we not only are willing, but feel ourselves bound, to abide the issue of any trial before the courts of the United States having cognizance of such matters, should Mr. Benson determine at any time to commence suit against us by reason of any alleged failure on our part to comply with the terms of said agreement.

We have the honor to be, very respectfully, your obedient servants,
F. BARREDA & BROTHER.

Hon. W. L. MARCY,
Secretary of State, Washington.

The vessels arrived from those included in article 5, have been settled according to charter-parties without any further allowance to Mr. Benson, he having failed to produce *in time* the proofs asked for in our letter of — January. Mr. Benson was aware that we were in the habit of charging 5 per cent. commission on freight, and he freely and spontaneously extended to us his offer of paying the same in the presence of the Peruvian minister, who remarked that this was a matter between us with which he had nothing to do, and remarked also that should Mr. B. decline to pay it, he (Mr. Osma) would ask from the Peruvian government to allow the same to us. The best proof of the incorrectness of Mr. B.'s statement regarding his motives to allow this commission is that on the 9th of January we advanced him \$4,000 on which we charged 2½ per cent. commission besides interest, he acknowledging the same by his receipt for \$4,100 of same date, copy of which accompanies. We sent an agent to New York for the purpose of making to B. the advance he spoke of, and which we promised to do, provided he could give us satisfactory security. Our agent, Mr. Barril, who, under our instructions, acted in connexion with Mr. Theodore W. Riley, after having been in New York over eight days, came back without being able to conclude any arrangement, as Mr. B. was unable to give any security of any kind for the advance he wanted. Neither Mr. Osma, nor Mr. Benson or ourselves could presume in December, 1852, that the \$20 freight were to be paid in hard Spanish dollars in the United States. The language used by Mr. Osma clearly shows that his meaning was to pay \$20 United States currency, and the use of the word *fuertes* is intended to avoid confusion with the *peso sencillo* by which the exchange with foreign nations is regulated in Spain. Mr. B. never mentioned to Mr. Osma, or to us, his interpretation of the wording of his note, nor did Mr. Jewett, when settling in full all the claims from the former on us.

NEW YORK, *January 9, 1853.*

I have received of Messrs. F. Barreda and Brother four thousand and one hundred dollars, which sum they will recover of the first amounts due to me for the difference in the rate of freight of the vessels whose charter parties I have endorsed to them and are to be paid after the arrival of those vessels according to our agreement signed in the date of yesterday, charging me, moreover, interest for the time that may run, at the rate of seven per cent. per annum. And if, by any unforeseen circumstance or on account of some of the condi-

tions of that agreement not being fulfilled, I should not be entitled to receive any amount from that proceeding before eight months hence, I oblige myself and hold answerable with all my property to the payment of the said four thousand one hundred dollars, and the interest at seven per cent. per annum on the time above named of eight months hence, and not further

A. G. BENSON.

Witness: T. M. BRAINE.

NEW YORK, *January 15, 1853.*

GENTLEMEN: In reply to your favor of 14th instant, which is as follows:

"NEW YORK, *January 14, 1853.*

"DEAR SIR: With the purpose of avoiding the prejudices that might ensue to you from the non-fulfilment of the charter-parties of the vessels Remittance, W. H. Harbeck, Realm, A. M. Lawrence, Element, Alert, Olivia, Chimborazo, Rechambrant, Emma Lincoln, Muscongus, Montreal, Paragon, N. H. Wolf, St. Andrew, B. L. Hariman, Charles Holmes, H. Harbeck, Colonel Cutts, Republic, Elvira Harbeck, Plymouth, Ticonderoga, and St. Thomas, proofs of whose legality you have not been able to present yet, we beg to state that we are ready to accept now your endorsement on them, in full accordance with our agreement of the 8th instant, provided that you bind yourself to present the above named proofs, or any others of legal force, for every one of these vessels, before the arrival of each of them to the United States. If for any circumstance or impediment whatever, you might not be able to present the above named proofs, before the arrivals of the said vessels, then it is understood that we shall not be bound to pay you the difference of freight as stipulated per article 5, but only to pay said freight to the vessels, as agreed in their charter parties with you without any further allowance, obligation or responsibility to us, as this concession is only directed to cover you from claims for non-fulfilment of these charter-parties, (although the said vessels can't be considered as enclosed in our agreement,) without injuring the interests of our government, as would be the case, if the freight of \$20 per ton, might be allowed for vessels whose contents do not appear enforced with the proofs of legality required to entitle them to such a concession.

"Respectfully yours,

"F. BARREDA & BROTHER,
"J. J. BARRIL.

"A. G. BENSON, Esq."

I beg leave to hand you endorsed in triplicate originals, and copies of the charter-parties of the following ships named therein:

"Remittance," 574, chartered in New York, on the 21st day August, to Harbeck & Co., at \$16 per ton.

"W. H. Harbeck," 872, chartered in New York, on the 21st of August, to Harbeck & Co., at \$16 per ton.

"Realm," 547, chartered in New York, on the 21st of August, to J. W. Elwell & Co., at \$16.

"A. M. Lawrence," 500, chartered in New York, on the 21st of August, to Cumberland & Phelps, at \$17.

"Element," 450, chartered in New York, on the 16th of August, to Crocker & Wausen, at \$17.

"Alert," 764, chartered in New York, on the 21st of July, to Crocker & Wausen, at \$16.

"Oliva," 650, chartered in New York, on the 14th of August, to Elwell & Co., at \$15 75.

"Chimborazo," 900, chartered in New York, on the 14th of August, to Elwell & Co., at \$15 75.

"Rechambrant," 900, chartered in New York, on the 13th of August, to Elwell & Co., at \$15 75.

"Emma Lincoln," 300, chartered in New York, on the 13th of August, to Elwell & Co., at \$15 75.

"Muscongun," 669, chartered in New York, on the 15th of July, to Foster & Michor, at \$16.

"Montreal," 392, chartered in New York on the 18th of August, to Harbeck & Co., at \$16.

"Paragon," 900, chartered in New York, on the 13th of August, to Foster & Mickersor, at \$16.

"N. H. Wolf," 449 chartered in New York, on the 26th of July, to Foster & Mickersor, at \$16.

"St. Andrews," 288, chartered in New York, on the 27th of July, to Foster & Mickersor, at \$16.

"B. L. Harriman," 645, chartered in New York, on the 30th of July, to Foster & Mickersor, at \$16.

"Chas. Holmes," 792, chartered in New York, on the 26th of July, to Foster & Mickersor, at \$16.

"Henry Harbeck," 398, chartered in New York, on the 14th of August, to Harbeck & Co., at \$16.

"Col. Cutts," 782, chartered in New York, on the 12th of August to Harbeck & Co., at \$16.

"Republic," 792, chartered in New York, on the 12th August, to Harbeck & Co., at \$16.

"Elvira Harbeck," 349, chartered in New York, on the 16th of August, to Harbeck & Co., at \$16.

"Plymouth," 425, chartered in New York, on the 19th of August, to Harbeck & Co., at \$16.

"Ticonderoga," 1072, chartered in New York, on the 17th of August, to Harbeck & Co., at \$16.

"St. Thomas," 714, chartered in New York, on the 16th of August, to Howes & Co., at \$16.

Said charter parties are endorsed in conformity to the conditions prescribed in the letter aforesaid, and the agreement between us of the 8th instant.

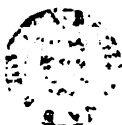
Your obedient servant,

Witness:

T. M. BRAINE.

Messrs. F. BARREDA & BROTHER.

Rep. Com. 397—19



A. G. BENSON.

Mr. A. G. Benson in account with F. Barreda & Brother.

1854.			
July	24	By balance due him per account rendered.....	\$34,446 61
	26	Amount paid J. C. Jewett, attorney.....	\$555 90
	26	.....do.....do.....do.....	10,563 10
Aug.	10	Amount paid S. T. Wallis, amount of debt and costs in suit brought by owner of the "Lone Star".....	1,315 25
	10	Paid T. P. Scott, Browns & Brune to dismiss bill Tracy vs. Benson.....	11,882 00
	14	Paid S. T. Wallis & Thomas cost in suit Tracy vs. Benson.....	31 83
	14	Paid the same professional fees in various attach- ment cases.....	100 00
			24,448 08
		Balance.....	9,998 53

BALTIMORE, August 18, 1854.

BALTIMORE, August 18, 1854.

Received from F. Barreda & Brother nine thousand nine hundred and ninety-eight dollars and fifty three cents, (\$9,998 53,) balance of the above account and in full of all claims and demands upon said F. Barreda & Brother of all sorts and descriptions whatever.

A. G. BENSON.

By his attorney:

JAMES C. JEWETT.

Witness:

S. T. WALLIS.

BALTIMORE, February 2, 1854.

Received from F. Barreda & Brother four thousand three hundred and sixty-three dollars and ninety-six cents, amount of difference due me on the freight of 727 tons 6 cwt. 2 lbs. of guano, delivered from ship Margaret, chartered by me at the rate of \$14 per ton, the said freight having been paid at \$20 per ton, according to the agreement entered into with the said F. Barreda & Brother, on the 8th January, 1853, in consequence of the concession made by the Peruvian government to the vessels intended to bring guano from the Lobos islands, chartered by me according to the terms specified in said agreement, the provisions of which are applicable to this vessel on account of her being mentioned in clause first. The aforesaid agreement being cancelled, in all that has reference to this vessel, in virtue of this receipt which I sign, after having been paid the above mentioned four thousand three hundred and sixty-three dollars and ninety-six cents, in fulfilment of what has been stipulated.

A. G. BENSON.

By his attorney:

JAS. C. JEWETT.

Witnesses:

R. STOCKETT MATTHEWS.

J. B. FITZGERALD.

Mr. Marcy to Mr. Benson.

DEPARTMENT OF STATE,
Washington, April 27, 1855.

SIR: I have examined your claim against the Peruvian government for damages alleged to have been sustained by you on account of the non-fulfilment of a certain arrangement proposed by that government through Mr. Osma, and of a subsequent agreement entered into by yourself and Messrs. Barreda & Brother in pursuance of said arrangement, and have come to the conclusion that the intricate and difficult points of law and fact involved in the question form a proper subject for and can only be determined by judicial investigation.

In order to satisfy myself as to the understanding of the Messrs. Barreda, and their disposition to have the matter tested before the courts without claiming exemption as agents of the Peruvian government from their responsibilities as individuals, I communicated with them, and have received the letter, a copy of which is herewith enclosed.

You will perceive that a way is open for you to determine your legal rights and recover damages in case there has been a violation of the contract without the interference of this department, and I am clearly of opinion that a suit at law is the only proper mode to settle the questions which have been raised between the parties.

Copies of any papers which may be required in the prosecution of your claim before any of our courts will be cheerfully furnished you at any time upon written application.

I am, very respectfully, your obedient servant,

W. L. MARCY.

A. G. BENSON, Esq., *New York.*

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1857.—Submitted and ordered to be printed.

Mr. DODGE made the following

REPORT.

The Committee on Commerce, to whom was referred the petition of George W. Fletcher, United States consul at Aspinwall, praying an increase of his salary, ask to be discharged from its further consideration, for the reasons set forth in the following letter of the Secretary of State, and ask that the report be printed.

DEPARTMENT OF STATE,
Washington, February 11, 1857.

SIR: Your letter of the 7th instant, asking for such information and suggestions as the department "may think proper and conducive to the public interest," on the subject of the enclosed petition and letter of George W. Fletcher, United States consul at Aspinwall, praying an increase of his salary, has been received.

The petition of Mr. Fletcher bears date on the 1st November, 1855, and refers to the inadequacy of the salary allowed to the consulate at Aspinwall under the act of March 1, 1855. Since then, another act has been passed, which, although fixing the compensation for the said consulate at the same rate as the one first named, authorizes the President, if he shall think there is sufficient reason therefor, to allow the actual expenses of office rent, provided the same does not exceed ten per centum of the amount of said compensation, and it also makes provision for an allowance to the consul when absent on account of sickness.

Under these circumstances, the department is not prepared, at this time, to recommend the increase of the salary referred to.

The petition and letter of Mr. Fletcher are returned herein.

I have the honor to be, sir, your obedient servant,

W. L. MARCY.

HON. HENRY DODGE,

Chairman of Committee on Commerce, U. S. Senate.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1857.—Submitted and ordered to be printed.

Mr. DODGE made the following

REPORT.

The Committee on Commerce, to whom was referred the memorial of Atkins Eldridge, praying for fishing bounty to schooner Brilliant, lost at sea in 1851, report against the prayer of the memorialist, for the reasons set forth in the following letter of the Secretary of the Treasury, and ask that the report be printed.

TREASURY DEPARTMENT,
February 14, 1857.

SIR: I have the honor to return herewith the petition of Atkins Eldridge, of Sag Harbor, with the draught of bill accompanying the same, received with your letter of the 11th. No claim for fishing bounty for the schooner Brilliant for the season of 1851 having been presented to this department, it contains no information whatever in regard to any of the statements in that petition.

In regard to the usual course of this department, where such claims have been permitted to slumber for any considerable time after they are payable in the ordinary mode, it may be proper to suggest that it has deemed itself bound to decline their examination unless it is proved that the five-eighths of the bounty which, by the 5th section of the act of July 29, 1813, under which these bounties are paid, belong to the crew of the vessel, has either been actually paid by the owner to the crew, or that all the persons composing the crew during the season in question still reside within the collection district to which the vessel belonged, and where the bounty is payable. Otherwise, an obvious inducement would be held out for delaying the presentment of claims to bounty until the crews, being generally a migratory class of people, shall have dispersed to parts unknown, and thus enable the owners to retain the whole bounty, contrary to the express provisions of the law. By the terms of Mr. Eldridge's petition, he does not appear to recognize the crew of his vessel as being entitled to any portion of the gratuity for which he appeals to the generosity of Congress.

The present is not a claim within the bounty laws; the vessel, according to the statement of the petitioner, having been lost before

the time required by law had been completed. Such cases, no doubt, occur every season. It appears that in 1852 some twenty fishing-vessels belonging to the district of Gloucester alone, as well as many others belonging to other districts, were lost in one storm, which occurred when most of them had completed the necessary time to enable them to claim bounty within a few days. This department was appealed to, under the circumstances, but it had no power to shorten the time prescribed by law even a single day. No application was made to Congress for special provision in these cases, so far as this department is informed, and it is believed the present is the first instance of such an application.

Very respectfully, your obedient servant,

JAMES GUTHRIE,

Secretary of the Treasury.

Hon. HENRY DODGE,

Chairman of Committee on Commerce, Senate U. S.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1857.—Submitted and ordered to be printed.

Mr. DODGE made the following

REPORT.

The Committee on Commerce, to whom was referred the resolution of the general assembly of the State of Iowa, in relation to the establishment of a custom-house and marine hospital in the city of Keokuk, report against their establishment, for the reasons set forth in the following letter of the Secretary of the Treasury, and ask that the report be printed:

TREASURY DEPARTMENT, *February 17, 1857.*

SIR: Upon the subject of the resolution of the general assembly of the State of Iowa, enclosed in your letter of the 11th instant, in favor of the erection of a custom-house and marine hospital at Keokuk, in that State, and in respect to which you desire my views, I have the honor to state that, in my opinion, it is inexpedient at this time to provide for either building.

Keokuk was made a port of delivery by the act of August 3, 1854. From that time to June 30, 1856, the duties collected amounted to only \$1,147 80. There is but one officer of the customs employed, and I cannot think it necessary, for his accommodation, or for any increase likely to take place for some years, to make the large outlay required for the erection of a building.

In regard to a marine hospital, there has been, during the same time, only \$21 collected for hospital money; and, besides this fact, as a marine hospital is now about to be built at Burlington, but a short distance from Keokuk, that building will be ample for the proper demands of both places.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

Hon. HENRY DODGE,
Chairman Committee Commerce, U. S. Senate.

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Figure 6

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IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1857.—Ordered to be printed.

Mr. WADE made the following

REPORT.

[To accompany bill S. 612.]

The Committee of Claims, to whom was referred the opinion of the Court of Claims in the case of Jane Smith, report :

This is one of a class of claims arising under the third section of the act of 3d February, 1853, which is as follows, viz: "That the widows of all officers, non-commissioned officers, musicians, and privates of the revolutionary army, who were married subsequent to January, anno Domini eighteen hundred, shall be entitled to a pension in the same manner as those who were married before that date." (10 Stat. 154.)

The act of July 29, 1848, (9 Stat., 265,) provides that the widows, &c., who were married prior to January 1, 1800, should receive a pension from the 4th March, 1848. The only question is as to the time of the commencement of the pension under the act of 1853. The court decides that as they were to be entitled to a pension *in the same manner* as if they had been embraced in the act of 1848, a true construction of the law requires that the pension should commence at the same date, as well as to be at the same rate. By the construction of the department the act of 1853 only allowed the pension to commence at the date of the law.

The claim, therefore, is for the arrears of pension accruing between the 4th of March, 1848, and the 3d of February, 1853, amounting, in this case, to \$393 84.

The committee concur in the opinion of the court, and recommend the passage of the bill to carry the same into effect in this case.

JANE SMITH vs. THE UNITED STATES.

Chief Justice GILCHRIST delivered the opinion of the court.

The claimant alleges that she is the widow of John Smith, deceased, who was a soldier in the revolution, and served during the whole of the war, for more than seven years, and was discharged in the year

1783. Her husband received a pension under the act of June 7, 1832, from the 4th day of March, 1831, until his death, on the 25th day of May, 1834. She was married subsequent to January 1, 1800, to wit, on or about the 12th of September, 1805. Soon after the passage of the act of February 3, 1853, entitled "An act to continue half-pay to certain widows and orphans," she applied to the Pension Office for a pension, at the rate of eighty dollars per annum, commencing on the 4th day of March, 1848, and to continue during her widowhood; but she was allowed a pension commencing only on the 3d day of February, 1853. She now alleges that she is entitled to the arrears of pension, at the rate of eighty dollars per annum, from the 4th day of March, 1848, to the 3d day of February, 1853.

The first section of the act of July 29, 1848, (9 Statutes, 265.) enacts: "That the widows of all officers, non-commissioned officers, musicians, soldiers, mariners, or marines, and Indian spies, who shall have served in the continental line, State troops, volunteers, militia, or in the naval service, in the revolutionary war with Great Britain, shall be entitled to a pension during such widowhood, of equal amount per annum that their husbands would have been entitled to if living, under existing pension laws; to commence on the fourth day of March, eighteen hundred and forty-eight, and to be paid in the same manner that other pensions are paid to widows; but no widow now receiving a pension shall be entitled to receive a further pension under the provisions of this act; and no widow married after the first day of January, one thousand eight hundred, shall be entitled to receive a pension under this act."

In order to entitle a widow to the benefit of this section, four conditions must be complied with: 1st. Her husband must have belonged to one of the classes specified; 2d. He must have been entitled to a pension; 3d. She must not be already in the receipt of a pension; 4th. She must have been married on or before the first day of January, eighteen hundred.

The 2d section of the act of February 3, 1853, (10 Statutes, 154.) is as follow: "That the widows of all officers, non-commissioned officers, musicians, and privates of the revolutionary army, who were married subsequent to January, anno Domini eighteen hundred, shall be entitled to a pension in the same manner as those who were married before that date."

Now, if we examine these two sections together, it seems impossible to reach any other conclusion than that the act of 1853 was passed with reference to the act of 1848. If this be so, what effect does it produce upon the former act? It refers to only one of the four conditions which were necessary to be complied with in order to entitle a widow to a pension under the act of 1848, and that is the condition relating to the date of the marriage. This condition is, that the widow shall have been married on or before the first day of January, 1800. The act of 1853 provides that if she were married subsequent to January, 1800, she shall be entitled to a pension in the same manner as those who were married before that date. Now, if this section be not entirely nugatory—if it has any meaning at all—it intends to dispense with the requisition that the widow must have been married

prior to 1800. No one can for a moment suppose that it was intended to ratify and re-enact the provision in the act of 1848. If it were not intended to reaffirm it, then the object was in some way and to some extent to modify it. An examination of the meaning of the words "in the same manner," will aid us in coming to a conclusion.

Now, there is no doubt that these words directly refer to the act of 1848, and the question is, whether they include the time of the commencement of the pension as well as its rate. The department has already decided that the same rate of pension is to be allowed under the act of 1853 as would be allowed for the same service under the act of 1848. The simple question then left for determination is this: Whether the time of the commencement of the pension is, or is not, an element of "the manner" in which the widow is to be pensioned?

The act of 1853 says, that the widow shall be entitled to a pension "in the same manner" as those who were married before that date, (1800.) In what manner, then, were those who were married before 1800 entitled to a pension? The answer to this is, that they were entitled to a pension equal to that which their husbands would have received under existing laws, commencing on the 4th of March, 1848, and continuing during their widowhood; and this answers the question in all its details, so far as relates to "the manner." It follows, then, as a necessary consequence, that a widow who was married subsequent to the year 1800, is entitled to a pension equal to that which her husband would have received under existing laws, commencing on the 4th day of March, 1848, and to continue during her widowhood; because she is entitled to it in the same manner as if she had been married on or before the 1st of January, 1800.

An illustration of this reasoning is found in the case of Ludlow's heirs, (3 Ohio Reports, 571.) The second section of a statute of Ohio "for the appointment of guardians to lunatics and others," provided that in failure of personal estate, the guardian of an "idiot, *non compos*, lunatic, or insane person," shall be authorized to discharge the debts of such persons "out of the real estate *in such manner* as executors or administrators are by law entitled to discharge the debts of deceased persons when the personal property is found insufficient." Judge Hitchcock, delivering the opinion of the court, in commenting upon this subject says: Here the principle seems to be recognized that at the time of the passage of this act there was a law in force authorizing administrators to dispose of real estate, and such appears to have been the fact * * * when in one statute a reference is made to an existing law in prescribing the rule or manner in which a particular thing shall be done, or for the purpose of ascertaining powers with which persons named in the referring statute shall be clothed, the effect generally is not to revive or continue in force the statute referred to for the purposes for which it was originally enacted, but merely for the purpose of carrying into execution the statute in which the reference is made. For this purpose the law referred to is in effect incorporated with and becomes a part of the one in which the reference is made, and so long as that statute continues will remain a part of it; although the one referred to should be repealed, such repeal would no more affect the referring statute than a repeal of this

latter would the one to which reference is made. Such references are common in our legislation, and a slight examination will show that this is the effect intended to be produced."

Another illustration of this reasoning is to be found in the Constitution and the legislation of Congress. The 4th section of the 1st article of the Constitution of the United States provides, that "the times, places, and *manner* of holding elections for senators and representatives shall be prescribed in each State by the legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing senators." Under this section Congress passed an act on the 25th of June, 1842, (5 Statutes, 491,) the 2d section of which provides that "in every case where a State is entitled to more than one representative, the number to which each State shall be entitled under this apportionment shall be elected by districts composed of contiguous territory, equal in number to the number of representatives to which said State may be entitled, no one district electing more than one representative." Now, it was considered by Congress that in the word "*manner*" was included the power to prescribe that congressional districts should each be composed of contiguous territory, although in some of the States the elections for members of Congress had always been had by general ticket. Whether the authority of Congress, in this particular, has ever been contested or not, this act shows the construction given by Congress to the word *manner*.

Now, if the *manner* of holding an election means that Congress may provide that the election of its members shall be by districts composed of contiguous territory, the word is surely comprehensive enough, in the present case, to mean that the pension shall commence on the 4th of March, 1848.

It has been urged that, as the act of 1853 contains no specific reference to any preceding act, there is no more reason for commencing a pension under it, at the date fixed by the act of 1848, than there is for commencing the pension at the dates fixed by the acts prior to 1848. But this position is untenable: *Firstly*. Because there is no such reference in the act of 1848, or in any act before that time, to any preceding act, as there is in the act of 1853 to the act of 1848: and there is no reference in the act of 1853 so specific, to any act prior to 1848, as there is to the act of 1848 itself.

Secondly. An examination of the several acts will show the fallacy of this position. The 3d section of the act of July 4, 1836, (5 Statutes, 128,) provides that a widow whose marriage took place before the expiration of the last period of her husband's service, shall be entitled to receive a pension from the 4th of March, 1831, because she stands in the place of her husband. Now, it is very clear that no widow who was not married before the expiration of the last period of her husband's service is entitled to a pension under the act of 1836. On the 7th of July, 1838, (5 Statutes, 303,) it was enacted that widows, &c., whose marriage took place after the expiration of the last period of their husbands' service, and before the 1st day of January, 1794, should receive the pension, during the term of five years from the 4th of March, 1836, which might have been allowed her husband by the

act of 1832, if he had been living at the time of its passage. Now, it is very certain that no widow is entitled to a pension under the act of 1838, unless she had been married after the expiration of the last period of her husband's service, and before the 1st day of January, 1794. This precise fact must have been proved in order to entitle her to a pension. The act of March 3, 1843, (5 Statutes, 647,) extended the benefit of the act of 1838 to the widows for and during the term of one year from the 4th of March, 1843. The first section of the act of June 17, 1844, (5 Statutes, 680,) extended the benefits of the act of 1838 to the widows for and during another term of four years from and after the 4th March, 1844.

We come now to the act of July 29, 1848, (9 Statutes, 265,) the first section of which provided that the widows, &c., should receive the same pension to which their husbands would be entitled under existing laws, to commence on the 4th day of March, 1848; but this act excludes those widows who were married after the 1st day of January, 1800.

Now, it may be remarked in relation to the acts of 1836 and 1838, that under neither of them would it be sufficient to prove merely that the widow was married prior to January 1, 1800. Under the act of 1836 she must show that she was married before her husband's last term of service expired. Under the act of 1838 she must show that she was married between the expiration of the last period of her husband's service and the 1st day of January, 1794. It is perfectly clear that if she showed merely that she was married before the 1st day of January, 1800, she could not be entitled to a pension under the act of 1836, or under that of 1838. Now, proof of the marriage before January 1, 1800, would entitle her under the act of 1848 to a pension, commencing on the 4th day of March, 1848; but by no possibility could it entitle her to a pension commencing at the time referred to by the act of 1836, or the act of 1838. The conditions of the three acts are all different from each other. Under the acts of 1836 and 1838 no one would venture to affirm that it would be sufficient to prove merely that the marriage was before 1800, because both these acts state specifically the period when the marriage must have been solemnized in order to entitle the applicant to a pension, and it is impossible to declare that proof of a marriage before January 1, 1800, would be sufficient to entitle the applicant to a pension under the acts of 1836 and 1838, without entirely disregarding the express provisions of those laws.

This seems to us to be a perfect answer to the position that the act of 1853 may refer to the acts of 1836 and 1838, for the time of the commencement of the pension, as well as to the act of 1848.

It is sufficient, under the act of 1848, to prove merely that the widow was married before the 1st day of January, 1800. In that case she would be entitled to a pension commencing on the 4th day of March, 1848, by the express terms of the law. Under the act of 1853 it is sufficient if the applicant proves her marriage to have been subsequent to January, 1800. In that event she would be entitled to a pension in the same manner as if she had been married before that date. Now, if she proved merely that she was married before that

section of the act of that date, entitled "An act to continue half-pay to certain widows and orphans."

We think the claimant is entitled to the arrears of her pension from the 4th day of March, 1848, to the 3d of February, 1853, at the rate of \$80 per annum ; and we report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1857.—Ordered to be printed.

Mr. JOHNSON made the following

REPORT.

[To accompany bill S. 615.]

The Committee on Public Lands, to whom was referred the petition of Theresa Dardenne, praying indemnity for losses sustained in consequence of an erroneous sale of land by the land officers at Little Rock, to her late husband Abraham Dardenne, report :

It appears on record in the General Land Office, that Abraham Dardenne entered at the land office at Little Rock, Arkansas, on the 30th of January, 1836, the north part of the northwest fractional quarter, (east of Arkansas river,) of section six, in township five south, of range nine west, containing $43 \frac{1}{10}$ acres, as per certificate of purchase No. 1133 ; also the northeast fractional quarter of the same section, containing $159 \frac{4}{10}$ acres, as per certificate of purchase No. 1132 ; that some eleven years subsequent to the date of said entries it was discovered that said tracts of land were covered by donation certificate No. 107, dated May 19, 1830, (claim No. 145,) in the name of the heirs of Aaron Hanscom, which claim was reported to the General Land Office "to be good" by a special agent of that office, in his report of November 21, 1837, and consequently a patent issued thereon ; and in 1847, ten years after said report of the special agent, the register and receiver at Little Rock were instructed to advise Mr. Dardenne of the illegality of his said entries. It further appears of record, that the purchase-money, amounting to the sum of \$253 23 $\frac{1}{4}$, still remains in the treasury of the United States.

The affidavit of the petitioner, widow of the late Abraham Dardenne, sets forth, that herself, husband, and children labored hard to improve and reduce to a state of cultivation the aforementioned lands, for the term of eleven years, believing their title to the same was perfect ; and that during said term of years her husband was repeatedly offered \$5,000 for said premises, but refused the same, preferring his home to money. It further appears in evidence that the petitioner, with her five children, (who were dependent upon her for support,) were ejected by force of law from said premises on the first day of January, 1851, and that herself and children are homeless and in a state of destitution ; and this, her present deplorable situation, having been brought about solely by the errors of the United States land officers.

As a summary, your committee state that Abraham Dardenne, deceased, bought from and paid the United States for land to which the United States had no title, having already sold it. That the United States still holds the purchase-money of said Dardenne, amounting to \$253 23, and has held the same over *twenty-one years*. That for *eleven years* said Dardenne was suffered to hold and improve said land without notice that he had no title, notwithstanding the Commissioner of the General Land Office confirmed the claim of Aaron Hanscom's heirs in 1837, one year after said Dardenne made his entry. but which fact was not communicated to Dardenne until 1847, being ten years after said confirmation was made. That said Dardenne continued to reside on said land, refusing to give it up, until his death, and his family after him till January 1, 1851, when the widow and her children, resisting in the courts, were ejected by force of law. That they are poor, and the children, five in number, dependent on the mother. That they have not only lost the use of their money, but the interest for over twenty-one years; and not only lost the land, but all the improvements, which, with their own labor and humble means, they had expended on it for fifteen years of continuous occupation, which had greatly enhanced its value; that to refund now only the purchase-money would be a gross wrong; that to refund it with interest would be palpably unjust, in the loss of all their labor and improvements, and the increased value of the land. That all lands of similar value on the banks of the Arkansas river are now entered and out of the reach of the petitioner. That authority to enter, in full satisfaction, six hundred and forty acres of land, subject to private entry, seems to the committee the nearest approach to justice; and yet they are aware that, in many respects, it fails to repay a family now thrown upon the world and made destitute by *errors* in which they had no agency.

The committee make a part of this report the accompanying letter of the Commissioner of the General Land Office, dated January 26, 1854.

GENERAL LAND OFFICE,
January 26, 1854.

SIR: I have the honor to acknowledge the receipt of the petition and accompanying papers of Theresa Dardenne, widow of Abraham Dardenne, praying Congress to indemnify her for losses sustained on account of an erroneous sale of lands made to the said Abraham by the land officers at Little Rock, Arkansas, which papers were referred by you to this office on the 21st inst.

In reply, I have to state that it appears from the records of this office that Abraham Dardenne entered at the land office at Little Rock, Arkansas, on the 30th January, 1836, the north part of the northwest fractional quarter (east of Arkansas river) of section 6, in township 5 south, of range 9 west, containing 43.14 acres, per certificate of purchase No. 1133; also the northeast fractional quarter of same section, township, and range, containing 159.45 acres, per certificate of purchase No. 1132; that some time subsequent to the date of said entries it was discovered that the same were illegal, for the reason that the said tracts of land were covered by donation certificate No. 107,

dated May 19, 1830, (claim No. 145,) in the name of the heirs of Aaron Hanscom, which claim was reported to this office "to be good" by the special agent in his report of 21st November, 1837, and, consequently, a patent issued thereon. And the register and receiver at Little Rock, in a letter from this office dated the 30th November, 1847, were instructed to advise Mr. Dardenne of the illegality of his said entries, in order that he might make application for the refunding of the purchase-money paid thereon. Such being the facts in the case, this office has no power to afford relief further than to recommend the return of the purchase-money paid on said entries, which, from the examination made, does not appear ever to have been done, and to which Mrs. Dardenne would appear to be entitled, upon application being made in due form.

The case, as recited in the petition, appears to be one of peculiar hardship; and you have the warmest wishes of this office for the success of any efforts you may make in behalf of the destitute widow and orphans. The papers are herewith returned to you.

Very respectfully, your obedient servant,

JOHN WILSON,
Commissioner.

Hon. R. W. JOHNSON,
United States Senate.

The committee report the accompanying bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1857.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany Joint Resolution S. 48.]

The Committee of Claims, to whom was referred the joint resolution to authorize the Secretary of the Treasury to audit and settle the accounts of the contractor for erecting the United States marine hospital at San Francisco, California, report :

That they have examined the joint resolution and the following letter from the department, giving the views of the Secretary of the Treasury in its favor.

The committee report the resolution without amendment, and recommend its passage.

TREASURY DEPARTMENT, *February 18, 1857.*

SIR: I am requested by Major Bowman (who left hurriedly for Charleston this morning) to say to you that it would be almost, if not entirely, impossible for the committee to investigate fully during the remainder of the session of Congress the voluminous details of the claim of C. Horner for extra work on the marine hospital at San Francisco; and that the Secretary approves of the resolution of the Senate, to refer the matter to him to be finally settled on just and equitable principles.

I have the honor to be, very respectfully, your obedient servant,
S. M. CLARK,

Chief Clerk Office of Construction.

Hon. R. BRODHEAD,

Chairman Committee of Claims, Senate Chamber.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1857.—Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany bill S. 616.]

The Committee on Private Land Claims, to whom was referred the petition of F. A. Underwood and H. A. Crane, heirs of Jehu Underwood, praying confirmation of their title to a certain tract of land, have had the same under consideration, and submit the following report :

The petitioners having changed the prayer of the petition from a confirmation of their title for authority to assert their claim before the district court for the northern district of Florida, present a question differing from the original one for consideration.

The petitioners claim title to sixteen thousand acres, being a square of five miles, and being what is known as a "mill grant" in the State of Florida.

This claim, together with another claim for six hundred acres of land for cultivation, was presented to the commissioners appointed to adjust private land claims in the then Territory of Florida, who, on the 27th of September, 1825, rendered the following decision, viz :

"The board find the above to be a valid Spanish concession, the conditions to which have been complied with ; but as the quantity of land is undefined by it, and the royal title confirming and ascertaining the quantity is dated after the 24th January, 1818, they report it to Congress for decision."

This decision is headed, "Jehu Underwood *vs.* the United States, for six hundred acres of land." (See Am. State Papers, Public Lands, vol. 4, p. 484.)

But as the petition of Jehu Underwood asked for *six hundred acres* for cultivation, and the concession grants *six hundred acres* for that purpose to the petitioner, the above decision would not apply to this concession, since they say "the quantity of land is undefined," and, therefore, must have been in reference to the "mill grant."

In December, 1825, the said commissioners made a report thereon, (Am. State Papers, Public Lands, vol. 4, p. 285,) which is headed "Report No. 6."

"Register of claims derived from the Spanish government by written evidence, *undefined in quantity*, and are ascertained to be valid, and which are recommended to Congress for confirmation."

In this report, the claim of Jehu Underwood is in the name of *John* Underwood, and it shows the claim to have been founded upon a concession dated the 20th day of May, 1805, and undefined in quantity.

The date of the mill grant is the same as that mentioned in the above report, to wit: the 20th of May, 1805, and is undefined in quantity; whilst the grant for cultivation is dated the 18th of May, 1818, and is for a *defined* quantity, to wit: six hundred acres. It is conclusive, therefore, that this decision and report is upon the claim of Jehu Underwood to the land comprised within five miles square, that being the usual grant for the erection of a mill.

There were two concessions for the erection of this mill: the first, dated May 20, 1805, and the second was in the nature of a confirmation, dated May 16, 1818. It is to this latter date that the commissioners refer in their decision, when they say: "The royal title confirming and ascertaining the quantity is dated after January 24, 1818."

Under all the circumstances in this case, the committee, without expressing an opinion upon its merits, and in conformity to the wishes of the petitioners, report the accompanying bill, which provides that the claimants may assert their rights before the district court of the United States for the northern district of Florida.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 20, 1857.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill S. 603.]

The Committee on Private Land Claims, to whom were referred Senate bill No. —, a bill to authorize the purchase of a certain tract of land belonging to Francis Gardere, and the accompanying papers, have had the same under consideration, and submit the following report:

The tract of land in question is a small strip twenty-one feet front with a depth of thirty-five arpens, which is partly enclosed within the arsenal grounds at Baton Rouge, and the whole separates the grounds of the United States used for arsenal purposes.

In 1850 said Gardere proposed to sell to the government this strip of land, and three disinterested persons were appointed to appraise the same, who, after stating that the land derived its value in a great measure from its contiguity with the arsenal grounds, appraised the same at the sum of \$4,000.

A report was made to Colonel Craig, of the Ordnance Department, by the officer in command of the arsenal, in which he states that it was desirable and necessary that the government of the United States should be the owner of this land, providing the same could be purchased at a fair and reasonable price. In 1852 the officer in command appointed three disinterested persons to appraise the same, who, in a report dated May 1, 1852, affixed the fair cash value thereof at the sum of fifteen hundred dollars. This appraisement, together with the report of the officer in command, was, by Colonel Craig, communicated to the Secretary of War, with a recommendation that the land in question should be purchased by the United States, providing the same could be had at the sum of fifteen hundred dollars.

In a communication from the Secretary of War to the Senate Committee on Private Land Claims, they were requested to prepare a bill authorizing the purchase of this land at the price recommended by Colonel Craig. The said bill was reported from the committee, and, on the 20th of July, 1852, passed the Senate; but, owing to the want of time, was not considered in the House of Representatives.

Since that time nothing has been done in relation to the matter, the United States in the meantime having the possession of a part of

the land, and the use of the remainder in passing from one portion of the arsenal grounds to the other.

As this strip of land is necessary to the arsenal grounds, and as the proper officers of the government have recommended the purchase at a price named, the committee have no hesitation in reporting back the bill, with a recommendation that the same do pass.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 21, 1857.—Submitted and ordered to be printed.

Mr. WRIGHT made the following

REPORT.

A resolution having been passed by the Senate during its last session, instructing the Committee on Manufactures to inquire how far it would be practicable and expedient for the government to employ iron as a building material in the construction of the various edifices necessary in the conduct of the administration of its affairs, your committee beg leave to report :

That it has given to the subject a careful and attentive consideration, the result of which is briefly set forth in the following report :

In every civilized country, the cost of the public edifices necessary in the collection of customs, in the administration of justice, in the erection of asylums, hospitals, and other humane and charitable institutions, barracks for troops, arsenals, residences for the officers of the army and navy commanding garrisons and naval stations, as well as the more imposing and extensive edifices connected with the executive and legislative departments of the government, consumes a considerable portion of the public revenues.

In this country, owing to the federative form of the government, composed, as it is, of a number of States, soon to be largely increased, each of which is independent, enacting its own laws, administering justice within its own limits, providing for the education of its own youth, and the dispensation of charity to its own poor and insane, the cost attendant upon the construction of public edifices is increased to an amount that would be surprising to those who have not given to the subject more than a cursory examination. Nor is the estimate of the cost of our public edifices completed by an enumeration of the variety of objects for which they are required by the general and State governments. Those which belong to municipal and other corporations, not to speak of the magnificent structures erected by the merchants of our great cities, for the accommodation of a world-wide traffic, vie in magnitude and grandeur with the edifices of the nation and the States.

The progress of the country in improvements of every kind, and its increase in power and wealth, have stimulated the popular taste, and created a desire which are not satisfied with the simple and unostentatious structures which commended themselves to our fathers. The love of splendor which our marvelous prosperity has generated in the minds of the people, is manifesting itself in all directions ; and both

national and State governments have been infected with the prevailing contagion.

Were it the duty of the committee to moralize, it might be disposed to censure the departure of both government and individuals from the simplicity and economy formerly practised, and which are so much in harmony with our republican institutions. But this is not our proper province. Our business is to state facts, and deduce conclusions in relation to the subject with which the committee have been charged.

Hitherto, at least until within a very few years, the public edifices in this country, as well as in every other, have been constructed mainly of wood, brick, and stone. The building stones heretofore in use have embraced every variety, from porphyry and marble, to the most porous and crumbling conglomerate and sandstone. The most magnificent temples of Greece and Italy, those which have survived the influence of time through more than twenty centuries, were built of marble. The Coliseum at Rome, and the Arena at Verona, were of travertine, formed of a deposit of limestone. These last mentioned edifices were erected in the reign of the Emperor Trajan, and remain in a great measure perfect at the present time. In view of durability, therefore, marble, granite, and several species of limestone are adequate to every necessary purpose; and the same may be said of the brick used by the ancients, as is proved by the aqueducts of Rome, and the still older walls of several cities of Asia, built before the era of authentic history.

If beauty and magnificence, without regard to cost, were all that is desirable, marble would furnish a material for building purposes superior to every other. But the cost of buildings constructed of marble is too great to authorize its adoption, except for edifices of great pretension, in which magnificence is considered of more importance than economy. The red and yellow sandstones, likewise, furnish a very beautiful material for building purposes, much less costly than marble, though not as durable or susceptible of so high a degree of polish and ornamentation. Indeed, in point of durability, the sandstone is inferior to both brick and limestone.

To the employment, however, of both marble and sandstone as building materials, there are frequently objections growing out of the locality where edifices are to be erected, which are, in a great measure, inseparable. Marble and the finer sandstones are rarer in this country than any other of the materials used for building purposes. In many places they are not to be had, except by transporting them such a distance as greatly to increase their cost beyond all reasonable and prudent limits; and there are localities where even limestone and brick of a proper quality are only to be had by bringing them from an inconvenient distance. These considerations, together with the fact that there is no standard of cost, owing to the disparity of prices for these materials at different points, have rendered it desirable that some other material, more generally accessible, uniform in price, and convenient of transportation, should be found adapted to the purpose. Such a material, it is now believed, is furnished in the iron, spread in such profusion throughout the Union.

The history of the rise and development of iron as a building ma-

terial forms an interesting page in the annals of the present progressive era. The idea of a metallic or iron architecture is of European origin ; but its development and adaptation to useful purposes belongs to our own country, where iron has been first practically substituted for brick and stone ; and, in the opinion of the committee, it is not too much to say that few of the improvements and discoveries of the age promise more important results than the substitution of iron as a building material for the materials formerly in use.

In beauty, in durability, in polish, and susceptibility of ornamentation, it is superior to every other material except marble. By means of exceedingly cheap and simple inventions, it is rendered, as your committee are informed, completely fire-proof ; and the columns, beams, joists, girders, rafters, together with the plates which, in the form of veneering, cover the exterior walls, may be manufactured in New York, Philadelphia, Trenton, or elsewhere, and transported, at a moderate cost, to the point where they are to be used. If, as it often happens in this age of progress and change, it should become necessary to replace a building constructed of iron, by the erection of a larger one, the iron is not lost, nor even greatly depreciated in value, as is the case with every other material heretofore in use, but may be removed to some other place, and re-erected, without loss, and with small comparative delay.

For a number of years past iron has been employed as a material for building ships, and for various purposes, in connexion with the building of houses, especially in large cities, both in Europe and America. In England, in the building of steamships, it has, to a considerable extent, excluded the use of timber. Of one hundred and fifty-three steam-vessels built in Great Britain during the year 1853, one hundred and seventeen were of iron, and during the same period eight sailing vessels were constructed of the same material. The "Three Bells," so celebrated on account of the humanity, gallantry, and self-sacrificing spirit displayed by her captain and crew in standing by and rescuing the passengers of the ill-fated "San Francisco" in their perilous extremity, was an iron sailing vessel, built on the Clyde.

The committee have seen no accurate statement of the number of iron vessels built in England in the years 1854, 1855, and 1856, but understand the number was very large.

The attention of the government, as well as of the most intelligent engineers and architects, has long been directed to the application of iron in the construction of buildings ; but in the use of a new material many difficulties must be encountered and overcome. Iron is of two kinds, cast and wrought. Cast-iron is adapted, by its nature, to resist a crushing force, while wrought-iron is fitted to resist a tensile strain. Hence, the latter should be employed exclusively for beams, girders, tie-rods, anchors, &c., while cast-iron should be used for columns and walls. In the infancy of iron constructions, cast-iron was employed for beams and girders, and failed, from its natural unfitness for the purpose to which it was applied, and a prejudice was thus created against its use. When the researches and experiments of Stephenson, Hodgkinson, and Fairbairn, in reference to the great

tubular bridge over the Menai Straits, had fully developed the appropriate provinces of cast and wrought-iron, and when the successful erection of that bridge, followed by the magnificent Crystal Palaces in London and New York, had demonstrated the perfect adaptability and security of iron for building purposes, it only remained to remove a few mechanical difficulties in order to secure the general use of iron in all first-class structures. It is to the credit of the engineers and mechanics of this country that these difficulties have been overcome, mainly by their ingenuity and perseverance.

Wrought-iron beams of sufficient strength and size for the largest public buildings are now rolled solid at the works of the Trenton Iron Company, at Trenton, New Jersey, and have been used with great economy and the most entire success in all the public buildings erected within the last three years by the government. The merit of their application is chiefly due to the present Secretary of the Treasury, and to the careful experiments of Captain A. H. Bowman and Captain M. C. Meigs, United States engineers in charge of the public buildings. The successful issue of their application, in point of economy and strength, is so decided, that not only all the public buildings, but a still larger number of private structures, have been made fire-proof by their use, and the application of light segmental arches of brick, as may be seen in the Treasury extension or Post Office extension in the city of Washington.

The use of cast-iron for columns presents no difficulty. Long experience has demonstrated its economy and value, and it is difficult to find a public or private building of any magnitude in which it is not employed. Cast-iron has, also, been used extensively for the fronts of buildings in the large cities, with great success, so far as beauty and economy are concerned. The merit of its application in this way is due chiefly to James Bogardus, an ingenious mechanic of the city of New York. While the committee bear willing testimony to the extent and facility with which cast-iron has been employed for fronts, they are compelled to say that, so far as they are informed, no building has been built entirely of iron, on such principles as to avoid all the difficulties of the construction, and to secure all the advantages of being fire-proof, equable in temperature, and rigid in all its details.

The present Secretary of the Treasury, Mr. Guthrie, aided by the experience and scientific skill of the distinguished architect and engineer at the head of the Bureau of Construction, has practically demonstrated, not only that large quantities of iron in the shape of columns, beams, stays, joists, girders, rafters, floors, cornices, sash, &c., &c., may be employed with advantage for these purposes, but with equal advantage in the construction of the exterior and interior walls of the edifices.

By a cheap, simple, and convenient process lately invented, and by means of which the columns, beams, &c., are embedded in clay, *pi* or some other non-conductor of heat, they are completely isolated, and no longer liable to the expansion which rendered iron next to useless as a building material. Taking advantage of this invention, which, as above stated, is both simple and cheap, your committee are informed

that the Secretary of the Treasury has lately contracted for the erection of the marine hospital at New Orleans wholly of iron. In the proposals issued by the Secretary for bids for the erection of this edifice, iron was brought into competition with brick; and the result discloses the fact that an entire iron building, completely fire and lightning proof, with a beautiful and elegant external iron veneering, resembling in appearance the marble veneering or facing of the Capitol extension, may be erected in many localities cheaper than an edifice of common brick.

By the process above referred to, not only are the columns, beams, and iron frame-work composing the building isolated and secured against the effects of expansion, but, by the insertion of clay blocks, or *pise*, in the space between the outward and inward facings of the walls, the temperature of the building is comparatively equable and moderate during both the heat of summer and the frost of winter. The clay, *pise*, or other non-conducting substance which constitutes the walls, and by filling the space between the outward and inward facings, prevents, alike, the penetration of heat and cold—thus serving the double purpose of rendering the building fire-proof by embedding and isolating the iron frame-work by means of the non-conducting substance which surrounds it, and of correcting the extremes of temperature to which the iron building would be liable in the absence of the material of which the walls are composed.

From what has been stated, it will be seen that iron may be largely employed in connexion with the building purposes of the government. The advantages of iron, as a substitute for most of the building materials heretofore in use, are obvious, especially as there is reason to believe that buildings constructed of iron may, by means of the inventions to which reference has been made, be rendered, in a great measure, fire-proof. The advantages of the iron building consist in the uniformity of the cost of the material; the facility and economy with which it may be put up, taken down, conveyed to another place and reconstructed; in the fact that, in the event of conflagration, the material is not destroyed, nor even depreciated in value to any great extent. The iron, such of it as has been warped or otherwise injured by contact with the fire, may be recast, and the edifice reconstructed with the same materials. This is not the case with marble, granite, brick, sandstone, or wood; all of which are, in a great measure, destroyed and rendered worthless from the effect of a conflagration.

In many places where buildings are required for the convenience of the public service, neither brick nor the ordinary building stones can be had unless at an expense which transcends all prudential limits. Under such circumstances, iron is especially available, inasmuch as the frame-work of a building of any dimensions may be cast on the seaboard, and transported at a comparatively moderate cost to any desirable point. Another advantage arising from the adoption of iron as a building material is, that the cost is ascertainable in advance. This, in the estimation of the committee, is no small advantage. Heretofore, it has been a well-founded source of complaint that no estimate of a reliable character could be obtained of the cost of any building which the convenience of the government required it to erect.

In many instances the first estimate of the cost of a building has not amounted to one-third of the sum required for its completion. This was principally owing to the fact that the materials of which buildings have been heretofore constructed formed but a very small part of the whole cost. It is in the labor of preparing these materials, especially where they were ornate in design, and of elaborate workmanship, that the cost was made to consist. Besides this, diligence is not generally a characteristic of laborers employed by the government, nor is the account of the time during which they are engaged susceptible of rigid verification by the accounting officers. The pay-roll is the original voucher, and is not always kept in such a manner as to render it certain that the government has not paid for more days' work than there was work done. In this, at least, partially consists the reason why estimates have heretofore proved so fallacious.

But, in edifices constructed of iron, the cost of the material is the principal one, and this cost is uniform throughout the country. The iron can be purchased at so much per pound, manufactured into columns, beams, girders, joists, &c., each piece, no matter how great or how small, ready to occupy the place in the edifice for which it was intended. The elaborately carved capitals, cornices, &c., designed for show, as well as the columns, beams, and stays, to be covered by *pise*, or some other non-conducting substance, by which they are to be insulated and protected against the influence of heat, have their fixed price, which can be ascertained as well before the building is begun as after it is finished. In an edifice constructed of iron, each column, beam, and tie is prepared for its own particular place, and is ready to be put into it as soon as it is taken from the mould. There is, therefore, comparatively little labor necessary in the erection of an iron building, and the consequence is that an estimate of the cost of such a building may be furnished with reasonable accuracy in advance.

Another advantage to be derived from the employment of iron as a building material is the abundance in which it is almost everywhere found. In many portions of the country, while none of the stones usually employed for building purposes are to be had, and the material for brick is equally inaccessible, iron ore either abounds or is within convenient reach. This is an advantage which will become more obvious, as the ores which are at present sent unwrought are brought into demand by the extension of railroads and other avenues of communication; for as soon as a way is opened from the localities where these ores are found to a market, furnaces and foundries will be erected to convert them into materials for building and other purposes probably now unthought of.

But there is another consideration suggested by the application of iron to building purposes which should not be overlooked. It is its effect upon the production and consumption of this great American staple. It is well understood that the effect of any extraordinary demand for iron has a tendency to increase its price, and thus operate as a protection, to some extent, against the competition of the foreign manufacturer. It is, also, the opinion of many of the most intelligent of the manufacturers of this country, that any very considerable permanent increase of the demand for iron will gradually exhaust the

capacity of Great Britain to produce it at rates as low as formerly, in consequence of the rise which has taken place in the wages of labor, and the increasing difficulty of procuring a supply of the raw material under circumstances as favorable as heretofore to cheap production. Mr. A. S. Hewitt, one of the most distinguished ironmasters of the country, says, in a lecture delivered by him before the "Geographical and Statistical Society of New York," on the statistics and geography of the iron trade, that "the enormous increase in the make (of iron) of Great Britain, within the last three years, has had the effect to double the price of coal and iron-stone, and that the advance in the wages of labor has been very decided. In other words, (he says,) owing to the increased pressure for coal, and ore, and labor, it has cost much more per ton to make three and a half millions of tons last year, than it cost per ton to make two millions of tons eight years ago."

He also states, in the same lecture, that a point will be reached at a period, in his judgment not very remote, when England will no longer be able to supply the demand of foreign countries for this most necessary article of comfort, the consumption of which he considers as the standard by which the progress of civilization is measured. The increase of the production of iron in Great Britain, since 1818, is exhibited by the following table:

	<i>Tons.</i>
In 1818 the whole product was estimated at.....	300,000
In 1820, (Mushet) .....do..... do.....	400,000
In 1823, (official) .....do.....do.....	452,066
In 1825.....do.....do.....	581,367
In 1830.....do.....do.....	678,417
In 1836.....do.....do.....	1,000,000
In 1839.....do.....do.....	1,248,781
In 1840.....do.....do.....	1,396,400
In 1845.....do.....do.....	1,512,500
In 1847, (official) .....do.....do.....	1,999,608
In 1852.....do.....do.....	2,701,000
In 1854.. .....do.....do.....	3,585,906

In making this quantity of iron, five hundred and ninety-nine furnaces, averaging six thousand tons each per annum, were employed.

The subjoined table shows the production of the United States during the last forty-five years:

	<i>Tons.</i>
In 1810 the whole product was.....	54,000
In 1820, in consequence of a great commercial crisis, it fell to.....	20,000
In 1828 it had risen to.....	130,000
In 1829.....do.....	142,000
In 1830.....do.....	165,000
In 1831.....do.....	191,000
In 1832.....do.....	200,000
In 1840.....do.....	315,000

	Tons.
In 1842, under the compromise tariff, it was.....	230,000
In 1846, by Mr. Walker's estimate.....	765,000
In 1848.....do.....do.....	800,000
In 1849 it fell to.....	650,000
In 1850, according to census.....	564,755
In 1853 it fell to.....	500,000
In 1855.....	1,000,000

From the above table it will be seen that the production of iron in this country in 1855 was the same as that of Great Britain in 1836; and, if we should increase for the next twenty years, as England has done for the past twenty, our annual production will be, at the end of that time, viz: 1876, 3,500,000 tons, worth in pigs, bars, and plate, \$175,000,000.

But instead of increasing in the same ratio as England during the period referred to, there is reason to believe that the rate of increase will be accelerated.

During the last fifty years, the ratio of increase in the amount of production in Great Britain has been a constantly accelerated one. Between 1806 and 1824, the amount of production was doubled—that is to say, in 18 years. In 1836, a period of 12 years, it had doubled; in 1847, 11 years afterwards, it had doubled again; and in the 8 years following, to wit, from 1847 to 1855, it had increased from 2,000,000 tons per annum, to 3,500,000, at which rate it would have been doubled in ten years.

But, by reference to the foregoing table, it will be seen that the ratio of increase in the United States has, for the last few years, been greater than in England; and when we consider the various new uses of iron, and the development which from day to day is made of its adaptation to objects heretofore unthought of, we are led irresistibly to the conclusion that the increase of its production in the future must be greater than in the past.

Without referring to the employment of iron as a substitute for brick and stone as a building material, the committee would call attention to the amount of it used by the Treasury Department in the construction of the public buildings connected with its administration, in the shape of columns, beams, joists, girders, frames for doors and windows, rafters, floors, sash, &c., &c.

The following letter from Captain A. H. Bowman, engineer in chief of the department, exhibits the amount used for the above purposes within the last four years:

TREASURY DEPARTMENT, *January 31, 1857.*

SIR: In compliance with your request, I have the honor to report that the number of pounds of iron used in the construction of public buildings under this department, so far as its archives show, is 19,653,994 pounds. This quantity does not cover the iron purchased in the vicinity of the more distant works, as no details of it exist in this department; but it is believed, if these could be accurately ascertained, this quantity would be increased from one-third to one-half.

The above figures can only be taken as an approximation to the

actual quantity used, and much care has been taken in searching the details to keep within the amount. It will be entirely safe to estimate this quantity as having been actually used.

I have the honor to be, very respectfully, your obedient servant,

A. H. BOWMAN,

Engineer in chief Treasury Department.

When it is considered how small a portion of the edifices of the government are erected under the supervision of the Treasury Department, the amount of iron that may be advantageously employed by the general, state, and municipal governments in the construction of the variety of buildings necessary in the conduct of their diversified affairs, becomes obvious from a glance at the statement contained in Captain Bowman's letter.

With the prospect of so large an increase in the consumption of iron, taken in connexion with the profusion in which iron-ore, coal, limestone, and every ingredient employed in its manufacture, are found in every portion of the United States, it is difficult to fix limits to the amount, which experience will not overstep.

The amount of iron manufactured in the country during the year ending the 1st of January, 1853, according to the report of the Secretary of the Treasury, did not exceed 500,000 tons; yet, in the course of the next three years, it amounted to 1,000,000 tons. With such a ratio of increase, what will be the amount of production fifty years hence? The figures in which the production of that time would be summed up, provided the present ratio of increase should continue, would be almost astounding. Yet there is far more reason in the existing state of things, as well as in the prospect of the future, to conclude that the ratio will be accelerated, than that it will be retarded.

But, without speculating in regard to the future, the committee feel satisfied that the employment of iron for building purposes by the government, whether it be wholly substituted for brick and stone, or only partially used in the form of joists, girders, beams, frames, rafters, floors, sash, stays, and other detached portions of the public edifices hereafter to be erected, and for which its superiority to every other material has been fully demonstrated, must give an impulse to the iron trade which will largely increase the production, and at the same time promote the prosperity of this important branch of American industry. The example of the general government in employing iron will be followed by the state and municipal governments, and operate as a consistent, legitimate, and permanent protection to those whose business has been heretofore subject to numerous fluctuations, occasioned by frequent changes in our revenue laws, and constant competition from a rival whose skill was perfect, and who enjoyed, besides, the advantages of cheap labor and cheap capital. But the increased consumption of iron, owing to the new uses to which it has been applied, and especially to its employment as a building material, has, in connexion with other causes, neutralized to some extent the advantages heretofore possessed by the British over the American manufacturer. The employment of iron for the purposes referred to, and the consequent increase in its consumption, affords a kind of pro-

tection to the iron interest, to which no one can object, and which promises to become more effectual and more permanent than the legislative protection which has been so often sought in vain. The large increase in the production of iron, during the few last years, is a subject of congratulation. Next to her vast commerce, it was to her manufactures and trade in iron that the marvelous prosperity of Great Britain is owing. For the last twenty-five years the world has looked almost wholly to her for a supply of this indispensable product of her industry. But, in the time to come, there is no reason in the nature of things why we should not free ourselves from our dependence upon foreign countries, and England in particular, for so large a part of the iron which we consume. Not only may we shake off this degrading dependence, but, by judicious legislation and practical encouragement of this branch of our industry, become ere long the competitor of England in the markets of other countries. In point of production, we are now only second to England amongst the nations. The subjoined table exhibits the amount of iron produced in each of the following countries:

	Tons.
England, 1855	3,585,512
France, 1855, (estimated).....	650,000
Belgium, 1855	255,000
Russia, 1849, (estimated in 1855 at 300,000 tons).....	191,492
Sweden, 1850 (estimated in 1855 at 157,000 tons)	124,163
Norway, 1855.....	22,500
Austria, 1847 (estimated in 1855 at 200,000 tons)	165,777
Prussia	400,000
Balance of Germany.....	200,000
Elba and Italy.....	72,000
Spain	27,000
Denmark and balance of Europe.....	20,000
United States, 1855	1,000,000
Total production.....	6,889,284

The following table shows the amount of iron, domestic and foreign consumed in the United States in 1840, 1850, and 1855, respectively:

Total amount in value of pig iron, castings, wrought iron, and manufactures of wrought iron, produced in the United States in—

1840	\$29,909,163
1850	60,485,653
1855	78,406,533

Consumption of domestic iron and the manufactures thereof in the United States in—

1840	\$28,804,707
1850	58,574,333
1855	74,658,066

Home consumption of foreign importations of iron, and manufactures of iron and steel, and cast-shear and German steel, in—

1840	\$7,088,739
1850	17,524,459
1855	23,945,274

Total consumption of foreign and domestic iron, and manufactures of iron and steel ; also cast-shear and German steel, in the United States in—

1840	\$35,893,446
1850	76,098,792
1855	98,596,304

In conclusion, the committee beg leave to remark that the application of iron, even for partial purposes connected with the erection of our public edifices of various kinds, has been made with entire success, so far as regards strength, economy, and durability, and is a most important step in developing this branch of our national industry, and putting it on a permanent basis, provided its future growth is not impeded by any partial legislation to its disadvantage. That there is reason, moreover, to believe that iron may not only be advantageously employed for partial purposes, but as a material out of which the entire edifice may be constructed. If this expectation should be realized, as it promises to be, the consumption of iron will be very largely increased ; and, in that event, owing to the possession in inexhaustible quantities of all the materials for the manufacture of iron, the United States will become the largest producer among the nations of the earth, of this material, indispensable alike for peace or war, and at some future day exporting it more largely than it now imports it from abroad ; a result which the committee see no reason to doubt.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1857.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany bill H. R. 533.]

The Committee on Pensions, to whom was referred a bill from the House of Representatives entitled "An act directing the pension due James Huey, deceased, and Jane Huey, his widow, deceased, to be paid to their sole heir, Alexander B. Huey, of Georgia," have had the same under consideration, and submit the following report :

That it appears clear that he never was entitled to a pension under any existing law during his life, (he died in 1836,) nor was Jane Huey, his widow, (who died December 23, 1841,) entitled to a pension under existing laws at that period. Their claims, if they had any, demanded special legislation by Congress, and ceased to exist with their demise. And after a lapse of twenty-one years since the death of James Huey, his heirs cannot assert an equitable claim for a pension which is clearly shown never existed prior to his death. Your committee, therefore, recommend the adoption of the following resolution :

Resolved, That said bill from the House of Representatives (No. 533) be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1857.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill S. 623.]

The Committee on Private Land Claims, to whom was referred the "memorial of Joseph Ménard, praying to be allowed to relocate certain warrants for land granted to the late Marquis de Lafayette, of which he is the assignee," have had the same under consideration, and submit the following report:

These warrants were issued under the act of Congress of 1803 by the Secretary of War, and located under the act approved March 27, 1804.

The location of warrants number three, four, and five was found to be upon lands owned by private claimants, their title to which was subsequently confirmed. These locations, therefore, were cancelled by the General Land Office.

Subsequent to such location, the interest of the Marquis de Lafayette to the warrants in question was assigned to third parties. There being no authority to relocate the said warrants under the act of 1804, after their first location had been cancelled, the legal holders of said warrants made application to Congress, who, by an act approved February 26, 1845, authorized the relocation of said warrants—three, four, and five—upon any of the unappropriated public lands within the State of Louisiana. Under this latter act of Congress the said warrants were re-located, and upon application for a patent, the locations under two of said warrants, to wit, numbers four and five, were cancelled by the Commissioner of the General Land Office, on the ground that the lands located were covered by *live oak timber*, and was therefore not subject to location.

The petitioner, yielding to the decision of the Commissioner, now asks that, since the locations under these warrants have been twice set aside and cancelled, he may be permitted to relocate the said warrants, numbered four and five, upon any of the public lands of the United States.

The act of 1845 would be ample enough to authorize a relocation within the State of Louisiana; but owing to the fact that nearly all of the lands in said State have either been disposed of by the United

States, or are covered by private claims, the right, therefore, to relocate under said act would be of no great value to the claimant.

The committee are of opinion that justice to the petitioner requires the passage of an amendatory act, giving him the right to relocate said warrants upon any of the public lands subject to sale at private entry; they therefore report the accompanying bill, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1857.—Submitted, considered, agreed to, and ordered to be printed.

Mr. HALE made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Nathaniel P. Swan, report:

That the petitioner, supposing all the statements and allegations in the petition to be true and fully proved, discloses no such state of facts as has ever been recognized by the government as furnishing a valid claim for relief. They therefore recommend the passage of the following resolution:

Resolved, That the petitioner is entitled to no relief from the government.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1857.—Submitted, considered, agreed to, and ordered to be printed.

Mr. HALE made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the memorial of the heirs of Daniel Trueheart, asking to be indemnified for the loss of property during the revolution, have examined the same, and submit the following report :

This claim was first presented to the Senate, by petition, at the second session of the 25th Congress. A motion to discharge the committee was laid on the table, and leave to withdraw was given to the petitioner. The petition was then presented, the same session, in the House of Representatives, and referred ; the committee reported that they be discharged, and the report was laid on the table. The petition was again presented in the House of Representatives the third session of the same Congress, referred, and the committee discharged. The petition was again presented at the first session of the 26th Congress, but no report was made. It was again presented in the House of Representatives at the second session of the 27th Congress, referred, and the following report was made, and laid upon the table.

IN THE HOUSE OF REPRESENTATIVES, *August 20, 1842.*

Mr. MAYNARD, from the Committee on Revolutionary Claims, made the following report :

The Committee on Revolutionary Claims, to whom was referred the petition of Daniel Trueheart, report :

That the petitioner asks payment for buildings destroyed by the enemy in the revolutionary war, on the ground that those buildings were occupied for military purposes. The committee have come to the conclusion that claims of this class ought not to be allowed. For their views upon this subject, they refer to a report made at the present session upon the petition of Samuel Youngs.

The committee recommend that the prayer of the petitioner be rejected.

At the third session of the 27th Congress this petition was again presented in the Senate, referred, and no report was made upon it.

At the first session of the 28th Congress this petition was again presented in the Senate, referred, and the following report was made, viz :

IN SENATE OF THE UNITED STATES, *January 15, 1844.*

MR. JARNAGIN made the following report :

The Committee on Revolutionary Claims, to whom was referred the memorial of the heirs of Daniel Trueheart, to be indemnified for the loss of property destroyed by the enemy during the revolutionary war, report :

That they have given the memorial, and the documents accompanying it, a careful examination ; but, from the conclusions arrived at by the committee, it is unnecessary to state the allegations contained in the memorial, or to inquire how far they are sustained by proofs, which, it may not be amiss to state, do not make out a case proper for the action of Congress. But the committee have determined to dispose of this case upon general principles, decisive not only, in their opinion, of this case, but of all similar applications in time to come. Without adverting to the perseverance with which this claim has been prosecuted for the last five years, it may be remarked, it is not now presented for the first time, and was, in fact, reported against on the 20th of August, 1840, by the Committee on Revolutionary Claims in the House of Representatives, (Rep. No. 1073,) based upon the principles laid down in the case of Samuel Youngs, representative of Joseph Youngs, (27th Congress, 2d session, Rep. No. 1074, Ho. of Reps.) It is there said :

"The principle of paying for private property destroyed by the enemy was never acknowledged by Congress during the revolutionary period, nor was any promise or favor extended to claims of that nature, either by any general, and, it is believed, any special legislation, until the act of April 9, 1816, which provided for the payment of the value of property destroyed by the enemy during the last war, under certain circumstances. This act provided for cases which were then recent, and contained directions for ascertaining the facts of each case by adequate proof, and constituted a competent tribunal to examine and judge of the sufficiency of the evidence. Up to the time of passing this act and the act of March 3, 1817, the committee cannot discover that Congress ever acknowledged the liability of this government to pay for property in such cases, whether occupied for military purposes or otherwise. On the contrary, Congress at an early day denied this doctrine. The following extract from one of a series of resolutions for auditing and settling claims against the United States, dated June 3, 1784, shows the view then taken of this subject : 'That, according to the laws and usages of nations, a State is not obliged to make compensation for damages done to its citizens by an enemy, or wantonly or unauthorized by its own troops ; yet humanity requires

that some relief should be granted to persons who, by such losses, are reduced to indigence and want; and, as the circumstances of such sufferers are best known to the States to which they belong, it is the opinion of the committee that it be referred to the several States (at their own expense) to grant such relief to their citizens, who have been injured as aforesaid, as they think requisite; and if it shall hereafter appear reasonable that the United States should make any allowance to any particular State who may be burdened much beyond others, that the allowance ought to be determined by Congress; but that no allowance be made, by the commissioners for settling accounts, for any charges of that kind against the United States.'

"This resolution denies the liability of government to make compensation, but recommends the States to make an allowance to the sufferers, in consideration of their *poverty* and *des'titution*, rather than as an obligation resting upon the State governments to pay the value of the property destroyed. Many claims for compensation for property taken and destroyed by the American forces, as well as by the British, were presented to Congress soon after the revolutionary war. Among these was the petition of William Dewees, praying compensation for buildings used for military purposes at Valley Forge, and destroyed by the British. This petition, with others, was referred to the Secretary of the Treasury, as early as January, 1791. November, 1792, Mr. Hamilton, Secretary of the Treasury, made a report, and submitted it as his opinion, 'that it is advisable carefully to forbear a special interposition of the legislature in favor of similar claims.' Even at that time, the Secretary urges as a reason against opening the door to such claims, that the 'lapse of time has added to the difficulty of investigating satisfactorily claims which generally rest on evidence merely oral, and which, intrinsically, are liable to much vagueness and abuse.'

"This claim was, it seems, still persisted in, and a petition again presented, January 25, 1794, and referred to a select committee. This committee reported, February 11, 1794, stating that 'it would be consistent with the justice and liberality of government to authorize the allowance of a reasonable compensation in this and all other cases similarly circumstanced; but, as a provision of this kind would involve a political consideration heretofore undecided on, and the nature of which cannot always be discriminated, so as essentially to obviate all difficulty on the score of precedent, they were unwilling to decide on a principle, the object and extent of which cannot well be foreseen; and therefore beg leave to bring the question before Congress,' &c.

"This report was submitted to a Committee of the Whole; and upon the report of that committee the House resolved, (December 15, 1794,) that the petition of William Dewees be rejected. The committee select this case of Colonel William Dewees, because it is as strong and as well authenticated as can be well imagined, to show what the opinion and action of Congress was upon this class of claims, and because it will be seen that this claim was pursued until 1818, when an act was passed authorizing the payment of eight thousand dollars in satisfaction thereof. A few other claims of the same nature have since been allowed by special acts.

"This committee cannot but suppose that the claim of Colonel Dewee was allowed because the facts were very clearly ascertained, and reported to Congress at an early day, when witnesses were living who could testify to all the minute circumstances of the case, and when the government could protect itself against fraud and imposition. It is quite probable, too, this case was not supposed or intended to form a precedent for the allowance of claims to be brought up and proved by the frail recollection of witnesses, after the lapse of more than half a century. Yet Dewee's case has been urged successfully, together with the extension of the principle of the acts of 1816 and 1817 to revolutionary cases in favor of other claims, a few of which have been allowed, which are again urged as precedents by the applicants in favor of their claims. Thus it will be seen that the allowance of Dewee's claim has called up others, and these latter have waked up still more, which would have slept in oblivion but for the favor shown to the claim of Dewee. It is thus that the allowance of one claim (just, perhaps, in itself,) may involve the government in a maze of difficulties, from which it cannot be extricated except by prescribing and adhering to some general rule, which will protect the treasury from stale, uncertain, and fictitious claims. Limitations of demands upon government are essential, as a protection against fraud and injustice; and it is generally better to let such injuries as have not been provided for by remedial laws, made at the time they may have happened, or within such a reasonable time thereafter as will give an opportunity to the parties injured, as well as the government, to ascertain the facts of the case, than to undertake, after the lapse of ages, to supply supposed defects and omissions in the laws of preceding generations. To undertake, at this day, to equalize the damages and losses sustained by the war of the revolution would be a hopeless and never-ending task, the performance of which would be utterly impossible. Time has smoothed down the rough furrows of the griefs, the misfortunes and losses, of the dreadful but glorious struggle of our forefathers for independence. Justice cannot now be attained by attempting a new assessment of the losses then sustained. If claims of this kind, which were not then acknowledged as charges upon the government, are allowed, others, equally unprovided for and unsatisfied, and equally or perhaps more meritorious, would rise up, until it would be cheaper and less hazardous to fight over again the battles of the revolution, than to do justice to those who suffered in that agonizing struggle, according to any rule which can be now prescribed.

"The view taken by the committee of this class of cases is fortified by reports of the departments and the decisions of Congress, up to the year 1817 or 1818, and by several able reports of committees since that time. The committee will refer particularly to a report from a former committee, by Mr. Little, (see Rep. No. 154, Ho. Reps., 19th Cong., 1st sess.) and the reasons therein, to show the impropriety and danger of allowing claims of this character.

"That committee says: 'Your committee have not deemed it necessary rigidly to investigate the testimony offered by the petitioner, which might go to establish the facts set forth in the petition. The great length of time having elapsed, (being now more than forty-five

years,) would render it difficult at this time to ascertain what they really are in the petitioner's case; the presumption is that he could not claim, else the government would have been applied to for remuneration when all were invited to present their accounts—at a time, too, when the incidents of the war were well remembered, and the seat of government then located in the neighborhood of the petitioner, whose father, in his lifetime, could have established his claim, or the petitioner, after his decease, were it just, or one that could have been allowed. The destruction of property is inseparable from the operations of war, and that which happens to be contiguous to an army is used as interest may dictate, or the respective wants of the contending parties may require. There was not a State in the Union, it is believed, exempt from the ravages of the revolutionary war; and whenever the acknowledged and legitimate usages of war sanctioned its use or destruction, the governments of the several States have made early provision to compensate; and, if obligatory on the United States, it is presumed, have long since been settled and paid, in the adjustment of the respective accounts with the several States.'

"It will be seen, in the case of Dewees above mentioned, that the government never acknowledged its liability to pay for injuries done to real estate by the operations of war; and the distinctions between such property as was for the time occupied for military purposes and such as was not so occupied, and between such property as might be rightfully destroyed, according to the supposed rules of civilized warfare, and that which would be protected, were not taken until the passing of the act of 1816, above mentioned. Even if it should be now conceded that it is just, and according to correct principles of government, to pay for buildings destroyed by an enemy on account of their military occupation, it would be difficult to apply the rule so as to render equal justice to all. A great many, probably a large majority of the revolutionary claims falling within the principle, from the lapse of time, could not now be satisfactorily proved. Such a rule, established so long after the events happened, would be justice to a few out of many sufferers. Partial justice, when applied to the action of government, is injustice. The committee are of opinion that the time has arrived when all claims arising out of the revolutionary war, except, perhaps, such as constitute *actual debts*, or are founded upon some express contract or stipulation of the government, ought not to be entertained. They therefore are of opinion that the petitioner's claim should be rejected."

This committee concur in the principles of the report quoted, and therefore submit the following resolution, and ask its adoption:!

Resolved, That the prayer of petitioners be denied.

At the same session this petition and report were recommitted, and another report made thereon by the same committee, as follows:



IN THE SENATE OF THE UNITED STATES, *February 5, 1844.*

Mr. JARNAGIN made the following report:

The Committee on Revolutionary Claims, to whom has been recommended the memorial of the heirs of Daniel Trueheart, with the accompanying papers, praying compensation for the loss of property alleged to have been destroyed by the enemy during the revolutionary war, have given the same an attentive examination, and report:

After maturely considering the principles involved in this case, the committee feel confirmed in the correctness of their report of the 15th of January last, when this case was before them on a former reference, and now report as their opinion—

1st. That there is no act of Congress, or practice under the government of the United States, or usage among civilized nations, giving a right to compensation for property destroyed by an enemy, or creating a duty to provide for the payment of such compensation; the committee are aware cases have occurred where persons have been indemnified for such losses, but in these cases relief was not granted upon an admitted right to demand it, but upon considerations of poverty and destitution on the part of the unfortunate sufferer.

2d. If the present claim ever existed in fact, the committee are authorized to presume the same had been satisfied or released.

The loss is stated to have occurred in 1781; from that time up to the death of Daniel Trueheart was about twenty-seven years, and during that period there is no evidence he thought or ever pretended he had any claim against the United States. Daniel Trueheart died about 1808, and his representatives set up no claim till 1838; and this claim was presented for the first time about fifty-seven years after the alleged loss was sustained. The committee do not insist upon time as a bar, but use it as a witness against the present existence of any valid claim in petitioners for a loss sustained fifty-seven years before their application for indemnity. This presumption of payment or release, drawn from lapse of time, is a necessary shield to protect the treasury against stale, uncertain, and even fictitious claims. Without charging the present to be a claim of the latter description, your committee are satisfied it is every way better, if all the allegations of petitioners in this case be true, to let such injuries go unprovided for, than to undertake, after the lapse of ages, to supply supposed defects and omissions in the laws of preceding generations.

Soon after the revolutionary war, claims like the present were presented to Congress, and uniformly rejected. In 1792, some such were referred to Alexander Hamilton, then Secretary of the Treasury, and he promptly rejected them, yet with a commendable delicacy for the feelings of the claimants, saying: "It is advisable carefully to forbear a special interposition of the legislature in favor of such claims, as the lapse of time has added to the difficulty of investigating satisfactorily claims which generally rest on evidence merely oral, and which intrinsically, are liable to much vagueness and abuse." If, in 1792, time formed so strong an objection to claims like the present, has the addition of fifty years lessened the force of that objection? That is

has not, is proved by the vagueness of the proof offered in this case. The deposition of Reuben Gardner states that, in 1781, it was *reported* a part of the British army, at that time invading Virginia, was encamped on the south side of Chickahominy swamp or river. It was also reported and believed it was the intention of said force to cross to the north side of said swamp or river, where the Meadow bridges stood, which bridges had been destroyed to prevent the enemy passing to destroy military stores which the witness *was informed*, and verily believes were stored in two large barns or storehouses, the property of Daniel Trueheart, but at that time occupied by a man by the name of Mosden. That witness, with some twenty or thirty others, went to the place where the bridges had been, to prevent the passage of the enemy. That he was unarmed when he went, as well as some others, and was furnished with a musket and other articles, which he was informed came out of said barns. That he and his party stayed all night at the bridges, and on the next morning it was thought best to retire from that place. That witness and one Bowles crossed the river and endeavored to capture some of the horses of the enemy, but they found a part of the enemy's force ready mounted, and this caused witness and Bowles to retreat, and they did so across said river, and found their associates had left the place. Witness and Bowles remained, and in a short time the enemy appeared, were fired upon by witness and Bowles, which caused the enemy to retreat. That, in the after part of the day, the enemy came on the north side to the Meadow Bridge plantation, upon which said barns or storehouses were situated. Witness saw them march up the hill leading to the buildings. In a short time thereafter saw the smoke and then the flames rise from said barns or storehouses. Witness thinks the barns or storehouses were worth at least two thousand dollars. It is to be remarked, this witness gives no description of the property destroyed, so as to show the correctness of his estimate of the value. He does not know who set fire to the buildings, but makes the inference it was the enemy, from the circumstances given. He does not know that any arms or other public stores were deposited in said barns or storehouses, nor does he say he saw any persons about them as having charge of such stores. He says he and some twenty or thirty others went to the place where the bridges had been destroyed, which was in the neighborhood of said barns, to prevent the enemy from crossing, but he does not say he found any persons there, or was joined by any from the barns. He says he went unarmed, but was furnished with a musket that he *was informed* came from the barns; but he does not seem to know who furnished it, nor does he assign any reason why he did not go directly to the barns, and there receive his musket. In reference to this testimony, the committee may be permitted to say: "Lapse of time has added to the difficulty of investigating satisfactorily claims resting on evidence merely oral, and which intrinsically are liable to much vagueness and abuse." The testimony of Thomas Macon shows that, in 1781, during the invasion of Virginia by the British army, he was absent from the county of Hanover, where he was raised, within about six miles of the Meadow Bridge plantation, but on his return he learned the British forces had burned a part

of the houses on said plantation, in consequence of military stores belonging to the American army being deposited therein. That the houses destroyed were worth from one to two thousand dollars. This witness knows nothing of the destruction of the property stated in the petition but from information, and leaves the facts intended to be proved involved in mystery and surrounded by doubt.

The deposition of Samuel J. Winston states that he (the witness) was raised in the county of Hanover, in the State of Virginia, about four miles from the plantation known and called the Meadow Bridge plantation. That during the invasion of the State of Virginia by the British forces in 1781, it was *currently reported and believed* that a part of the military stores which were deposited in the city of Richmond were removed from said city, to prevent their falling into the hands of the invading enemy, to the Meadow Bridge plantation, and stored in two large barns, the property of Daniel Trueheart, in consequence of which it was reported said barns were burned by the British. That, the next day after fire was put to said barns, witness was sent by his father to the Meadow Bridge plantation, and saw the remains of the barns or storehouses then burning. That he made no examination among the ruins, and cannot say he saw the remains of any arms, but it was *currently reported and believed* the said arms were stored in said barns or storehouses.

The committee have given a pretty full abstract of the proof in this cause, to show the character of the evidence to be expected in making out claims against the United States for property destroyed in the revolutionary war. It has failed to satisfy the committee that the claim of the petitioners should be allowed; to allow which would be to wake up others, and invite their presentation; and against them, however unjust, it would be impossible, from so great a lapse of time, to protect the Treasury of the United States. In the opinion of the committee, the time has arrived when there is a legitimate presumption against the existence of valid claims against the United States, as incidents or arising out of the revolutionary war, particularly all such as rest upon evidence merely oral. Therefore, on principle, as well as a failure of evidence, the committee report, as the result of their deliberations, the following resolution :

Resolved, That the prayer of the petitioners be denied.

The claim of the petitioner is for damages incurred by his ancestor having a barn or storehouse burned by the enemy during the revolutionary war, which burning he alleges was because the barn or storehouse was used as a place of deposit for arms and military stores. Your committee, not satisfied with the previous investigations of former committees, have attentively re-examined the evidence submitted in this case, and are compelled to come to the conclusion that there is not sufficient evidence to prove either of the allegations in the petition, that military stores or arms were deposited in the building, or that it was burnt by the enemy; they, therefore, recommend the passage of the following resolution :

Resolved, That the prayer of the petitioner ought not to be granted.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 24, 1857.—Submitted and ordered to be printed.

Mr. FOSTER made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Nancy Fisher, one of the heirs and children of John and Sarah Chisom, praying to be allowed the pension due their deceased mother, beg leave to report that they have had the same under consideration and submit the following :

That no evidence has been adduced to satisfy the committee of the correctness of the claim, and they are compelled to coincide in the decision of the Commissioner of the General Land Office, and affirmed by the Secretary of the Interior, as will more fully appear by the following communication :

PENSION OFFICE, July 8, 1856.

SIR : I have the honor to enclose the papers in the case of the heirs of Sarah Chisom, deceased, widow of John, of Tennessee, under the act of July 4, 1836.

It is admitted that the marriage occurred before January, 1794, and that, consequently, the pension should commence running agreeably to the provisions of the act of July 7, 1838, if it could be shown that the service for which a pension is claimed was rendered by the husband of Sarah Chisom. This point, however, has not been met. It is shown that a John Chisom did render some service in South Carolina, during the war of the Revolution, but no such description of her husband's service has been given as to enable this office to ascertain whether the soldier who appears upon the record and the man for whose alleged services a pension is claimed are identical ; nor has the testimony of any witness been adduced who is able to show that fact, or to fix any definite period of service rendered by him. One witness, Lewis Taylor, swears that her husband did serve, and gives the names of Captain Thomas, Captain Taylor, and Colonel Thomas as officers, but he does not pretend to show how long he served under these officers, nor does the record show that the man whose name is found upon the South Carolina rolls served under the officers named by Taylor. The papers

in the case have been submitted, on appeal, to the Secretary of the Interior, who affirmed the adverse decision of this office.

I am, very respectfully, your obedient servant,

J. MINOT, *Commissioner.*

Hon. GEO. W. JONES,

Chairman Committee on Pensions, United States Senate.

Your committee, therefore, recommend the adoption of the following resolution :

Resolved, That the prayer of the petitioner be denied.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1857.—Submitted and ordered to be printed.

Mr. CLAY made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of L. A. Latil, praying a pension for long service as armorer at Baton Rouge, have had the same under consideration, and submit the following report:

It does not appear that the petitioner ever performed any military service, but claims a pension for long service in an arsenal belonging to the United States. If the government was to adopt the policy of pensioning every one who labors in her public works until old age arrives, it would only tend to discourage industry and bankrupt our treasury. Your committee unanimously recommend the adoption of the following resolution:

Resolved, That the petition of L. A. Latil be rejected.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1857.—Submitted and ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Micajah Owen, praying Congress to grant him an invalid pension, have had the same under consideration, and submit the following report:

That the petitioner states that he enlisted in the army of the United States in the war of 1812, and was enrolled March 7, 1813, and discharged May 31, 1815, for the reason that he was disabled during said service, while in a fit of insanity; the testimony adduced by petitioner is vague and unsatisfactory; the records in the War Department do not afford any evidence of disability occurring during the service. It appears that thirty-eight years elapsed before he applied to the Pension Department for a pension, which was then denied him for want of proof to sustain his claim; the same proof is brought before your committee. Therefore, your committee recommend the adoption of the following resolution:

Resolved, That the petition of Micajah Owen be denied.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1857.—Submitted, and motion to print referred to the Committee on Printing.

FEBRUARY 26, 1857.—Report in favor of printing 2,000 additional copies submitted, considered, and agreed to.

Mr. WELLER made the following

REPORT.

The Committee on Military Affairs, to whom were referred the resolutions of the Senate, to inquire into the expediency of authorizing the sale of the military asylum at Harrodsburg, Kentucky, and of discontinuing any further appropriations for continuing the military asylum in the District of Columbia, &c., having had these resolutions under consideration, report :

The act of 3d March, 1851, (chap. 26,) creates a board of commissioners, consisting of the General-in-chief, the generals commanding the eastern and western divisions, the Quartermaster General, the Adjutant General, the Commissary General of Subsistence, the Paymaster General, and the Surgeon General, (all of the United States army,) and authorizes them "to procure, for immediate use, at a suitable place or places, a site or sites for the military asylum;" and, "with the approval of the Secretary of War, to prepare the necessary rules and regulations" for the government of these institutions. And for the support of these asylums, the seventh section of the same act assigns any unexpended balance of the appropriation of the 2d March, 1847, for the benefit of discharged soldiers disabled by wounds; \$118,791 19 of the amount levied upon the Mexican government during the war with that republic; all stoppages or fines imposed by court martials; all forfeitures by desertion; two-thirds of the balance on hand of the hospital fund, and the post fund of each military station; and a voluntary contribution of twenty-five cents per month from each enlisted soldier in the army. The fund thus created amounted, in 1855, to \$490,140 17, which was increased, in 1856, to \$541,289 61—the receipts of that year being \$51,149 44.

In 1852 a site was purchased for an asylum at East Pascagoula, Mississippi, at \$5,000; and the board of commissioners having examined Blue Lick Springs, Kentucky, and reported against it as a site for a western asylum, bought from George W. Riggs, esq., his farm, near the city of Washington, for an asylum, for \$59,113 75;

and additional buildings have thereupon been erected, at a cost of \$159,700 17.

By the fourteenth section of the act of 3d March, 1853, \$10,000 was appropriated out of the public treasury to enable the commissioners to purchase the site at Harrodsburg, Kentucky, for which they paid \$100,000, and the improvements added thereto have cost \$2,538 58. The officers' quarters and furniture at this site were consumed by fire, in June, 1856, and have not since been restored.

The cost of these sites, buildings, furniture, stock, &c., is about \$300,000. The East Pascagoula site has been abandoned. The number of inmates of the Harrodsburg asylum is twenty-six, of the Washington asylum seventy-seven.

The expense of maintaining these institutions is as follows :

At Harrodsburg :

Subsistence, &c.....	\$5,900 00
Interest on cost of site, &c.....	6,152 32
Army pay, &c., of Major T. L. Alexander (governor)...	2,040 53
Army pay, &c., of Brevet Capt. L. B. Wood (secretary)	1,034 40

Aggregate actual annual expense.....	15,127 25
Or \$581 82 for each inmate.	

At Washington :

Subsistence, &c.....	\$19,500 00
Salary of secretary, treasurer, and clerk.....	1,824 00
Salary of architect.....	1,746 00
Paid for inspecting building.....	300 00
Paid for clerk, printing, &c.....	152 95
Paid for transportation of board of commissioners.....	546 80
Paid transportation of officers of asylum.....	323 60
Paid transportation of inmates to the asylum.....	249 35
Interest on cost of site and buildings.....	13,128 84
Army pay, &c., of Colonel Payne (governor).....	2,430 00
Army pay, &c., of Dr. King (treasurer).....	2,041 20

Aggregate expense.....	42,242 74
Or \$548 97 for each inmate.	

The Secretary of War, in his report at the 1st session of the present Congress, says: "The view which these reports give of the results of the institutions does not fulfil the anticipations which were entertained at the time of its establishment. If to the current expenses of the several branches there be added interest on the cost of buildings, &c., the average cost of maintaining each inmate will be found to exceed \$500—an expense so great as to indicate the propriety of seeking some proper mode of effecting a reduction. Harrodsburg branch was founded at a heavy charge upon the asylum fund, and is maintained at an expense much exceeding the advantages conferred upon the disabled soldier; but as it was established in consequence of the provisions of law contained in the army appropriation acts of August 31,

1852, section 18, and of March 3, 1853, section 14, the propriety of declaratory legislation in the case is suggested."

The motive prompting the establishment of these asylums was highly commendable. The duty of taking care of these decrepit and wounded soldiers, now no longer able to fight our battles or to keep starvation from their doors, is dictated by every sense of humanity and justice; and the small amount contributed by each soldier while in service added to the fund set aside by the government for that purpose, forms an amount amply sufficient to furnish them with comfortable homes after they have been overtaken by old age and infirmity.

The officers of the asylums, as provided by law to be taken from the army by the Secretary of War, on the recommendation of the board of commissioners, are as follows:

District of Columbia asylum: Brevet Colonel M. M. Payne, 4th artillery, governor; Assistant Surgeon Benjamin King, secretary and treasurer. Harrodsburg asylum: Major T. L. Alexander, 8th infantry, deputy governor; Brevet Captain L. B. Wood, secretary and treasurer.

These officers draw from the United States treasury their pay and commutation for rations, servants and forage, as if they were upon active duty elsewhere. They also draw extra pay for services at the asylum. Colonel Payne is allowed "yearly compensation as governor, \$380 40;" Dr. King is paid as "secretary and treasurer," and the architect, who receives \$1,746, also receives his pay and emoluments as an officer in the army.

The board of commissioners were last year paid for transportation \$546 80, and the officers of the asylum \$323 60 for the same object; while all of these officers keep horses for which they draw forage from the United States, and are not allowed transportation under ten miles. The Washington asylum is three miles from the city, where all these officers reside, except one or two.

The farm connected with the Washington asylum contains 300 acres of excellent land, and yields annually large and valuable crops of fruit, vegetables, grain, &c.; and the large amount expended upon it for the pay of hands, &c., justifies the belief that it alone, properly managed, could support all who are quartered upon the premises without drawing a dollar from the funded capital or taxing the annual receipts. But no return whatever is made of the farm products; and it is believed that the vegetables, &c., are used in common by the officers, servants, and inmates, and the forage is stored for the use of the farm horses, as well as for those of the officers.

No appropriation is now made by Congress from the public treasury for the support of these institutions, except for the pay of the officers. The benefits of these asylums, as now organized, is not extended to married men, unless they abandon their families to enter the asylum; and though some are necessitated to do so, yet many will not make that sacrifice. Married men, where it can be done, are employed by the asylum at 20 cents a day, and remain with their families outside of the institutions. All who obtain relief from the asylums, and are pensioners, surrender their pension upon entering the asylum, but they are put upon the pension rolls when they leave the establishment.

Among the expenses incurred by the Washington branch, and not stated above, are the following :

For a steward	\$391 70	a year.
For a gardener and farmer.....	300 00	"
For three farm hands.....	360 00	"
For a hospital steward	270 00	"
For a matron	120 00	"
For laundresses	205 25	"
For cooks	144 96	"
For a baker.....	112 00	"

It must be obvious that the expenses of sustaining these asylums are enormous, and it may well be doubted whether they do not far exceed the benefits conferred upon that class which they were intended to relieve.

The asylum fund is a large one, and so far as it will administer to the wants and increase the comforts of the soldier who has been broken down in the service of his country, should be judiciously and liberally expended. Properly dispensed, it would provide comfortable homes for this most meritorious class, and enable them to spend their remaining years free from the lash of penury and want. Congress, as the trustee of this fund, should see that it is not wasted in building splendid palaces for officers and in increasing their pay. The military asylum should be emphatically the *soldier's home*, not the magnificent dwelling of favorite officers, furnished and sustained mostly at the expense of the disabled soldier.

We are by no means confident that this system, which has been so eminently successful in European governments, will succeed in this country. Our peace establishment is so small that we have few professional soldiers, and we are happily freed from the revolutions which convulse other countries. Besides, the pride of our countrymen will compel them to suffer long and endure much before they will consent to be fed and clothed in charitable institutions at the public expense. This is evident in the small number of soldiers, and three-fourths of them being of foreign birth, now receiving aid from these asylums, compared with the number who were wounded or disabled in the recent war with Mexico.

The committee are satisfied that, with proper management, these asylums, now so fully underway, and sustained by an annual income as they are of \$50,000, may be made to realize the expectations of their founders, and, believing that one institution is sufficient to accommodate all who may apply for admission, recommend that the Harrodsburg site be abandoned and sold, that the experiment be tried for another year with the Washington branch, and that meanwhile some change be made in the law by which they were established, so as to provide for carrying it on without the enormous expense with which it is now attended.

The committee report an amendment to the army appropriation bill.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 25, 1857.—Submitted and ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Samuel McDougal, an officer in the army of 1812, praying to be allowed an invalid pension, beg leave to report:

That the petitioner claims a pension as an invalid on account of wounds received in said war. It appears that there is no evidence on record of his having incurred any disability while in the military service of the United States, nor has he presented any evidence to the committee that would establish his statement made in his application. Your committee therefore unanimously recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner be denied.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1857.—Ordered to be printed.

Mr. CLAY, made the following

REPORT.

[To accompany bill S. 567.]

The Committee on Pensions, to whom was referred S. Bill 567, for the relief of William James, beg leave to report :

That they have carefully examined the papers which are offered as testimony in support of petitioner's claim, and have consulted the Commissioner of Pensions as to the evidence contained in the records of his department, and find that two men named William James, "seaman," entered the naval service: one on the 31st day of July, 1813, who was discharged at Boston on the 16th day of July, 1815; and William James, second "seaman," who entered the naval service on the 14th of December, 1814, and was discharged on the 6th day of May, 1815, at Baltimore. No note of injuries received by either of them on the rolls. Petitioner claims to have been landed at Baltimore, and discharged at Boston. Thus there seems to be some complexity in the alleged service, while there is not a particle of evidence to explain it, or even to identify the petitioner with any service in the navy. Your committee therefore recommend the adoption of the following resolution :

Resolved, That Senate bill 567, for the relief of William James, be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES,

FEBRUARY 25, 1857.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany bill H. R. No. 597.]

The Committee on Pensions, to whom was referred "H. R. An act for the relief of Elizabeth Martin," have had the same under consideration, and submit the following report :

Petitioner claims a pension for services rendered by her husband, George Martin, as an express rider in and during the revolutionary war, who was employed at the rate of five dollars per diem for himself and horse. Admitting the service to be rendered as asserted by the petitioner, it was not military in its character ; nor was the express rider exposed to the dangers a soldier would incur by travelling alone. It is not claimed that he was wounded or injured, or contracted any disease, while so employed. Your committee are of opinion that petitioner has not a shadow of claim upon this government for a pension—especially for the arrears for 21 years proposed to be given in the House bill—and therefore unanimously recommend the adoption of the following resolution :

Resolved, That an act (597) of the House of Representatives, entitled "An act for the relief of Elizabeth Martin," be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1857.—Ordered to be printed.

Mr. WELLER made the following

REPORT.

[To accompany bill S. 627.]

The Committee on Foreign Relations, to whom was referred the memorial of Charles S. Todd, late United States minister to Russia, praying that he may be allowed the amount of certain items which were disallowed by the department in the settlement of his accounts, have had the same under consideration, and now report :

It appears from the memorial that in the settlement of Mr. Todd's accounts, after his return to the United States, the following items were disallowed, viz :

1st. This sum, paid for printed books, consisting of McCulloch's Commercial Dictionary, Arrowsmith's Atlas, Vattel's Law of Nations, Wheaton's International Law, American Almanac, Edinburgh and Quarterly Reviews, maps of Europe and America, Wheaton's Right of Search, Westminster Review, and Life of General Harrison, amounting to the sum of	\$78 34
2d. For one half of the expenses paid by him for the government steamer from Cronstadt to St. Petersburg, on his arrival	22 20
3d. This sum, expended by him at benevolent concerts given by Count Brenkendoff and Princess Galitzin.....	21 50
4th. For over charges in bringing the currencies of Russia and Hamburg into dollars and cents.....	46 40
5th. For payment made by John Miller, of London, and included in his account against the legation, to John Samson	5 32
6th. For attending the baptism of the infant duke at Zurko, the imperial village, 15 miles from the capital.....	12 17
7th. For expenses of attending military reviews, &c.....	324 36
8th. For over draft on the London bankers on account of salary.....	572 09
9th. For expences of office rent, heating and lighting the chancery, and wages of an office messenger.....	2,471 80

In support of the first item above named, the memorialist states that upon taking charge of the legation at St. Petersburg he found the library destitute of all the books and maps therein specified, with

the exception of a worn out copy of Vattel's Law of Nations, and that the books, maps, &c, purchased by him for the use of the legation were necessary for the proper performance of its duties, and on his return to the United States were left by him for that purpose.

In support of the 2d, 3d, 6th and 7th items, the memorialist shows that the expenses thus incurred were rendered necessary in compliance with the etiquette of the Russian capital, and that a failure to observe that etiquette would have materially lessened the efficiency of our minister at that court.

The 8th item, which was for his salary from the day on which he had audience of leave with the Emperor until the day of his departure from St. Petersburg, is supported by a reference to precedents in the cases of Mr. Dallas, one of his predecessors at the Russian court. 1839, and of Mr. Cass, our minister at Paris, in 1842, in both of which cases the salaries continued for some weeks after the audience of leave.

In reference to the 9th and last item the memorialist shows that an office was necessary for the preservation of the public archives, and for the proper transaction of the duties of the legation; that on account of the territorial extent of the city of St. Petersburg the services of a messenger were indispensable to the legation. And further, that similar allowances are made for the missions at London and Paris. at both of which courts the expense of living is far less than it is at St. Petersburg.

The Secretary of State, to whom the memorial was referred by the committee for information as to the facts set forth therein, under cover of a letter, dated 24th of January, 1847, enclosed a statement from the Fifth Auditor's office, setting forth the several items disallowed in the settlement of Mr. Todd's account, with the reasons therefor, and also copies of letters from Messrs. Webster, Upshur, and Buchanan, while they respectively held the office of Secretary of State, together with a copy of a circular letter from the Department of State, dated July 25, 1845.

From a careful examination of these several documents, and a comparison with statements of the contingent expenses of our foreign missions, contained in the published executive documents, it would appear that such allowances have heretofore been made to depend upon no determinate rule, but rather upon the existence of such peculiar circumstances in each case as in the judgment of the Secretary for the time being justified them.

- In the opinion of the committee the books and maps embraced in the first item were, under the circumstances, essentially necessary to the legation at St. Petersburg; and having been purchased by the memorialist for that purpose, and left by him on his return to the United States for the use of the legation, it is but just that the amount thus expended by him for the public benefit should be reimbursed.

The committee are also of opinion that the amount of expenses embraced in the 2d, 3d, 6th, and 7th items, resulting from a compliance with the etiquette of the Russian court, necessary to the efficiency of our minister there, and involving additional charges, should be allowed. And further, that the charge for office rent, heating and

lighting the chancery, and wages of a messenger, are, under the circumstances, just and reasonable, and should also be allowed.

In reference to the charge for loss in exchange embraced in the 4th item, the Secretary of State, in the letter above mentioned, says: "That actual losses by exchange are allowed by the accounting officers of the treasury on the rendition of accounts and vouchers to sustain such charges." And with regard to the charge contained in the 5th item, it appears, from the statement of the Fifth Auditor, above referred to, that it was not rejected, but only suspended for want of satisfactory explanation. As no special legislation seems to be requisite in order to a proper settlement of the two last mentioned items, the committee deem it best to leave them to the action of the department under existing laws and regulations, without any legislative instruction.

With regard to the charge embraced in the eighth item, the Secretary of State in the letter above mentioned, says: "The general rule as to the termination of the salaries of ministers is, that they are to cease on the day of the audience of leave. If that rule has been departed from in particular cases, it has been on account of some peculiar circumstances attending them." In this case the existence of such peculiar circumstances is not sufficiently clear to the minds of the committee to justify them in overruling the action of the department, and consequently they are not prepared to recommend its allowance.

In accordance with the views above presented, the committee report a bill authorizing the settlement of the accounts of the memorialist, and the allowance of the charges embraced in the 1st, 2d, 3d, 6th, 7th and 9th items, above mentioned, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1857.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany bill S. 629.]

The Committee on Pensions, to whom was referred the petition of Mrs. Sarah A. Watson, widow of Lieutenant Colonel William H. Watson, who was killed at Monterey, praying a renewal of pension, beg leave to report:

That it appears of record that petitioner was pensioned for two successive terms of five years each, under the acts of Congress of July 4, 1836, and of February 3, 1853, and that the second term expired September 23, 1856. It also appears of record in the Adjutant General's office, United States army, that Lieutenant Colonel William H. Watson was mustered into the military service of the United States with the Baltimore battalion, for twelve months, on the 30th May, 1846, and was reported, in the letter of Major General Zachary Taylor of September 22, 1846, as having been killed by the Mexicans before Monterey, while gallantly marching up to the walls of that city under the orders of that officer. Your committee deem the application of petitioner worthy of special legislation by Congress, and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1857.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany bill H. R. 768.]

The Committee on Pensions, to whom was referred "H. R. 768, An act for the relief of John Duncan," have had the same under consideration, and submit the following report:

That it appears by the official statement of the Commissioner of Pensions that petitioner was placed on the pension list at the rate of four dollars per month, being the full amount that could be allowed one of his grade, (landsman.) On the 30th of April, 1846, he appears to have been received into the naval asylum, and surrendered his certificate of pension—his pension was so far from being sufficient to furnish the absolute necessities of life. It is believed he is better in the asylum without his pension than out of it and in receipt of the same. Your committee, therefore, with a view of benefitting the petitioner, by permitting him to remain in his comfortable quarters in the naval asylum, recommend the adoption of the following resolution:

Resolved, That "H. R. 768, for the relief of John Duncan," be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1857.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany bill H. R. No. 470.]

The Committee on Pensions, to whom was referred H. R. An act for the relief of Letty Griggs, widow of Simeon Griggs, a revolutionary soldier, have had the same under consideration, and submit the following report :

That the petitioner claims a pension for military services rendered at different periods during the revolutionary war, viz : six months in the year 1777, and six months in the year 1778, continuously, besides some shorter tours. It appears from the records of the comptroller's office of the State of New York that the aggregate amount paid to Simeon Griggs and a man named Simon Griggs, was £10 17s. 10d.; that said amount would only pay for three months and twenty-six days' service. It also appears that petitioner received a bounty land warrant for one hundred and sixty acres, for the reason that her husband had served fourteen days and over. There is no adequate proof of the services alleged to have been performed by petitioner's husband before your committee. Therefore, it is unanimously agreed to report the following resolution :

Resolved, That "H. R. 470," be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1857.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany bill H. R. 369.]

The Committee on Pensions, to whom was referred the bill "H. R. 369, An act for the relief of Albro Tripp," have had the same under consideration, and submit the following report:

That the petitioner is now receiving a pension of ten dollars per month upon testimony filed, by his consent, in the Pension Office, after, as he says, he was totally disabled. It is a query in the minds of the committee as to what could have induced the petitioner to suffer his case to be misrepresented to draw half disability pension, when he now asserts he could have easily proven total disability at the time he proved himself half disabled. He does not offer any evidence to identify himself with any military service. Your committee, therefore, are unanimous in recommending the adoption of the following resolution:

Resolved, That "H. R. 369, An act for the relief of Albro Tripp" be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1857.—Ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

[To accompany bill H. R. 488.]

The Committee on Pensions, to whom was referred "H. R., An act 488, for the relief of Isaac Langley," have had the same under consideration, and submit the following report:

That petitioner has been in receipt of a pension since November 10, 1831, at the rate of five dollars per month; he now asks Congress to increase his pension; the testimony offered in support of his demand is informal, and not of that reliable character that is necessary to establish facts; he does not pretend to show the degree of disability with which he is afflicted, nor does he adduce any evidence to show when or how his disability increased.

Your committee, therefore, unanimously recommend the adoption of the following resolution:

Resolved, That "H. R.; An act 488, for the relief of Isaac Langley, be indefinitely postponed."

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 25, 1857.—Ordered to be printed.

Mr. FISH made the following

REPORT.

[To accompany bill S. 630.]

The Committee on Naval Affairs, to whom was referred the memorial of Edward D. Reynolds, purser United States navy, praying to be allowed a commission on his disbursements of the Mexican "military contribution fund," have had the same under consideration, and report:

They find that the memorialist, while doing duty on board the United States ships Warren and Southampton on the coast of Mexico, the year 1848, was appointed by Commodore Jones, then commanding the squadron in the Pacific ocean, as special agent for the purpose receiving and disbursing money collected in Mexico, and known as military contributions; that he signed receipts for the money received by him, holding himself accountable to the commander of the squadron; that he disbursed the money so received, under the orders said commander, and to his entire satisfaction; that with the sanction and approbation of said commander, he retained a commission of per cent. (amounting to \$614 63) upon the money so disbursed by him, as a "fair compensation" for the extra services rendered by him under his appointment as special agent, which services involved duties and responsibilities in no way connected with his commission as purser, but which were discharged under the orders of Commodore Jones; that upon settling the accounts of Commodore Jones at the Treasury in 1854, this sum of \$614 63 was disallowed; that memorialist was unwilling that Commodore Jones should be charged therewith, and in order to prevent Commodore Jones from being embarrassed by said charge, memorialist consented to have the amount allotted to the commodore, and for the present charged to himself, hoping that, upon a proper representation of the case, the amount would be allowed under the provisions of the act of March 3, 1849, entitled "An act to provide for the settlement of the accounts of public officers and others who may have received moneys arising from military contributions, or otherwise, in Mexico." But his case was deemed to come strictly under the provisions of said act. Hence resort to Congress—the department having consented to suspend the item of charge against him until the end of this session of Con-

gress, in order to enable him to endeavor to procure favorable action thereon, deeming the claim just and equitable.

Your committee also find that at the 2d session of the 33d Congress, (Stat. at Large, vol. 10, page 742,) "An act for the relief of William Speiden," who performed the same duties, was passed, allowing him $2\frac{1}{2}$ per cent. "upon the amount of military contributions received by him," &c. Also, that a similar act, for similar duties, was passed at the 1st session of the present Congress, "For the relief of Purser Samuel Forrest."

Your committee, under the circumstances of the case, deem the memorialist justly entitled to a "fair and reasonable compensation," and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1857.—Submitted and ordered to be printed.

Mr. TOOMBS made the following

REPORT.

The Committee on the Judiciary, to whom was referred the protest against the election of the Hon. Graham N. Fitch, beg leave to report :

That the committee has had the same under consideration, and find that important matters of fact alleged by the protestants, in connexion with the manner in which the election of the sitting member was had, are denied by him, and that it becomes necessary, in the opinion of the committee, to take the testimony of persons residing in the State of Indiana, for the better ascertainment of these disputed facts. For instance, it is, among other things, alleged by a portion of the protestants that "there was no joint convention of the two houses of said general assembly on said day" on which the election in dispute took place, and that a minority only of the legally sitting senators of Indiana participated in said election, which statements are denied by the sitting member; and he affirms, on the contrary, that "he was elected to said office by a majority of all the members composing the legislature of the State, they being then and for that purpose assembled in joint convention," and that he was elected whilst in such joint convention by a majority of the legally qualified members of the senate of the State, and of the legally qualified members of the house of representatives, respectively. For the proper ascertainment of these contested facts, and the better elucidation of the matters in dispute contained in the several protests herewith submitted, and the reply of the Hon. Graham N. Fitch, your committee recommend that leave be given to take testimony in the city of Indianapolis, and State of Indiana, and recommend the adoption of the following resolution :

Resolved, That in the case of the contested election of the Hon. Graham N. Fitch, a senator returned and admitted to his seat from the State of Indiana, that the sitting member and all persons protesting against his election be permitted to take testimony on the allegations of the protestants and the sitting member, touching all matters of fact therein contained, before any judge of the district court of the United States, or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis.

To the Senate of the United States:

The undersigned, duly elected and qualified members of the house of representatives of the general assembly of the State of Indiana, hereby protest against the pretended election of Jesse D. Bright and Graham N. Fitch, on the 4th day of February, A. D. 1857, as senators of the State of Indiana in the Congress of the United States, the former for the six years from the 4th day of March next, and the latter for the six years from the 4th day of March, 1855, by a portion of the senators and representatives of said general assembly, for the following reasons:

First. There was no agreement of the two houses of the general assembly, by resolutions or otherwise, to proceed to the appointment or election of senators in Congress on said day, or any other day of the present session of the general assembly.

Second. There was no joint convention of the two houses of the said general assembly on said day; nor was there any law of the State authorizing a joint convention on that or any other day for the appointment or election of United States senators; nor was there any resolution, or joint resolution, approved or adopted by the two houses of the said general assembly, or either of them, authorizing such joint convention.

Third. Said pretended joint convention was a mere assembly of a portion of the senators and representatives of the said general assembly, not in a legislative capacity, but as individuals, without any authority of law, without precedent in the history of legislature of the State, and having no legislative sanction; and said senators and representatives, when so convened, had no more constitutional right to appoint or elect senators than any equal number of private citizens of the State.

Fourth. There was not a constitutional quorum of either house of the general assembly present in said pretended joint convention, there being only twenty-three senators and sixty-one representatives, when, by the 11th section of the fourth article of the constitution of this State, it requires two-thirds of each house to constitute a quorum to do business; and when, by the law of the State, the number of senators is fixed at fifty, and the number of representatives at one hundred, in said general assembly.

Fifth. Because the undersigned, as legally elected and qualified representatives in said general assembly, have been deprived of their constitutional right to assist in the legal election of the senators in the Congress of the United States by said illegal, revolutionary, and unauthorized election.

Sixth. Because the legislature of Indiana, as such legislature, either by separate action of the two houses, or otherwise, as such legislature, had no part or voice in such pretended elections, and the same were in direct violation of the third section of the first article of the Constitution of the United States and the fourth section of the said article.

Seventh. Because said pretended elections are wholly void.

Eighth. Because if said elections are held valid, such decision will destroy the legal existence of the general assembly of this State, and

install in its place any mob which may see proper to take forceable possession of the house as a joint convention of the general assembly, without the concurrence of either body, the sanction of the Constitution, or authority of law.

For these and other reasons which might be named, the undersigned protest against the validity of said pretended elections, and ask that the Senate of the United States may declare them null and void.

Given under our hands this 4th day of February, at Indianapolis, A. D. 1857.

S. P. Williams,
Geo. Crawford,
James M. Austin,
J. N. Gordon,
C. M. Stone,
H. W. Sherman,
G. D. Wagner,
Thomas J. Neal.
G. K. Steele,
D. Batterton,
Alex. H. Conner,
M. P. Evans,
Wm. C. Jefferis,
S. B. Ward,
J. D. Conner,
Wm. Grose,
A. B. Price,
John Davis,

N. H. Ballinger,
Geo. C. Merrifield,
Silas Colgrove,
Geo. Moon,
William Hawkins,
John Whitcomb,
D. C. Branham,
J. W. Hutchings,
Robert Boyd,
John M. La Rue, Tippecanoe
county,
Marcus C. Smith,
Elijah Vansandt,
Smith Vawter,
Wm. M. Clapp,
R. N. Todd,
Milton Mercer.

The undersigned, a senator of the United States from the State of Indiana, and now acting as a duly qualified senator of the United States, submits to the honorable the Judiciary Committee of the body to whom the validity of his election has been referred, the following, as points upon which he believes and is advised that his own rights and the rights of his State require that evidence be taken and be before the committee, in order to enable them to decide understandingly and justly in the premises :

First. That he was elected to said office by a majority of all the members composing the legislature of the State, they being then and for that purpose assembled in joint convention.

Second. That he was elected, whilst in such joint convention, by a majority of the legally qualified members of the senate of the State, and of the legally qualified members of the house of representatives, respectively.

Third. That in order to ascertain the facts stated in the preceding point, he will be able, by evidence, to show that three of the persons who are contesting his election were not then, and are not now, legally members of the said State senate, and had no right whatever, under the laws and constitution of the State, to be considered, or, in any particular, to act as members of that body ; and that this was at the time, and still is, well known to the other contestants.

Fourth. That in the organization of said State senate, according to the constitution, laws, and usage of the State, the lieutenant governor presides and superintends the admission of the members, and the taking the required oaths of office. That upon this occasion, in violation of such constitution, laws, and usage, the said three members, who were without the expressly required credentials of election, the certificate of the proper and only returning officer, and whose seats were also known to be contested, and on grounds of fraud, also known to be true, were, by a presiding officer, chosen for the purpose by the members of the senate, designated as republicans, contrary to all law, and by naked wrong, directed, notwithstanding, to be sworn in, and for the clear purpose, illegal and fraudulent in fact, of defeating an election of senators of the United States.

Fifth. That the said convention by whom, as hereinbefore alleged, the undersigned was elected a senator of the United States, was assembled in accordance with an express provision of the constitution of the State, and that in accordance with the long and uniform usage of the State in that particular, the same was adjourned from day to day by the proper presiding officer thereof, and vested with the authority so to adjourn, and that each adjournment was made without objection by a majority of the senate, even considering the three persons aforesaid to have been members of that body being present.

Sixth. That there is not now in said State, as the undersigned is advised, any law for the regulation of the election of senators of the United States, or in any way providing for the same; and that according to the best professional and judicial opinions in the State, the election is to be made by the convention of the legislature assembled under the constitution of the State, to count the votes and decide upon the election of governor and lieutenant governor, as a power necessarily existing in the legislature, and from the obligations of the State to elect senators.

Seventh. That before the adoption of the present State constitution there was a law regulating such election, and that although the same was no longer in force, the said convention did, as far as it was possible, conduct the present election according to the provisions thereof.

The undersigned in conclusion submits, what, indeed, must be obvious to the committee, that as the witnesses and proofs to the matters above stated are only to be had in the State of Indiana, and can only properly be obtained by careful examination, and under the superintendence of himself, that it cannot be in his power to procure it at this or the approaching extra session of the United States Senate, even were he to abandon his duty as a senator, which he has no right to do, and proceed at once to the place where the testimony is to be had. He further submits, therefore, that the committee will so dispose of the matter now as will enable him and the contestants at a future period to present the entire case fairly and fully before them.

GRAHAM N. FITCH.

FEBRUARY 25, 1857.

True copy—attest:

THOS. P. MORGAN,
Clerk to the Committee.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1857.—Ordered to be printed.

Mr. Foot made the following

REPORT.

[To accompany bill S. 620.]

The Committee on Public Lands have had under consideration the bill granting lands for the construction of a certain railroad in the State of Alabama, and recommend its passage.

The committee make the report upon this bill, February 17, 1854, a part of this report:

The Committee on Public Lands, to whom was referred the "bill making a grant of land to the State of Alabama, in alternate sections, to aid in the construction of a railroad from the line of Georgia, on the Chattahoochee river, to the city of Mobile," having had the same under consideration, recommend the passage of the bill, and beg leave to present the following report:

The Savannah and Albany railroad, proposed to be aided by the grant of alternate sections of land to the State of Alabama, provided in the bill under consideration, has been chartered by the States of Georgia and Alabama, and is intended to connect the Atlantic ocean at Savannah, Georgia, with the Gulf of Mexico at Mobile, Alabama, in a nearly direct line, about four hundred and fifty miles in length, with a branch road from the main line at Albany, Georgia, through Eufaula to Montgomery, Alabama, about one hundred and fifty miles in length; making, together, about six hundred miles of road. Of this the greater part will be in Georgia, and something less than three hundred miles will pass through the United States lands in Alabama.

The company has been organized in Georgia, with a subscription of one million three hundred thousand dollars, and active preparations are being made to commence the work; but the company has no present prospect of procuring sufficient capital to extend the road to the public lands of Alabama without the aid proposed by this bill—the country through which it will pass being, comparatively, unsettled, destitute of capital, and valueless, on account of the great difficulty and expense of reaching a market with its productions.

The considerations to the United States treasury, for the grant pro-

posed in this bill, are valuable and important. The lands in the southern part of Alabama, through which this road will pass, have been subject to occupation and sale more than thirty years; they are reputed to be well timbered with yellow pine, and capable of yielding a fair return to the agriculturist; and yet, within this long term of years, but a small fractional part of these lands has found a purchaser at the government price. Whatever may be the capability of the country for productions, they are so nearly consumed, in transportation to market, that no compensating remuneration is left to the producer. In their present condition the lands are of but little value to the treasury; and, being exempt from taxation, are a burden to the State of Alabama. The construction of the road, which is made one of the conditions of the grant in this bill, will at once open to these lands both the markets of the Gulf and those of the Atlantic, by a cheap and rapid communication.

The great amount and value of the commerce which annually passes through the straits of Florida, between the Gulf and the Atlantic—variously estimated at from three to four hundred millions of dollars; the time occupied in the voyage—estimated at from fifteen to twenty days for sail vessels; the expense, and the hazard of property and life attending it; the importance of shortening the time, diminishing the dangers, and cheapening the means of communication between the Atlantic and Pacific coasts of the United States—all these need only to be alluded to, to show the bearing of this road to the government, and especially to the cotton-growing States which it penetrates and connects. When the road shall be completed the time of passing between Savannah and Mobile, 450 miles, will be reduced to 15 hours; between Savannah and Montgomery, 340 miles, to less than 12 hours. Connecting roads are projected or in course of construction, which, with this line, will form an unbroken coast railroad from Texas, via New Orleans, Mobile, Savannah, and Charleston, to the northern cities; and Pensacola and Brunswick will probably be connected with this line by short branch roads. When the projected connexions shall be formed with New Orleans and with Charleston, it is estimated that the time of passage from New Orleans to Savannah, 550 miles, will be less than twenty hours; and from New Orleans to Charleston less than twenty-four hours. The centre of the great coal region of Alabama, 80 miles from Montgomery, may be reached from Savannah within fifteen hours. The abundance of timber and naval stores for the construction and repair of our ships; the establishment of a coal depot on the southern Atlantic coast for the supply of steamers; the increased productions of the soil; the commerce; the shipping; and the exports and imports which would be consequent upon the construction of this road, are all objects of importance to the government and to the whole country.

For other particulars, and the estimation in which this road is held by the State authorities of Georgia and Alabama, reference is made to the accompanying resolutions of the general assembly of Georgia, Governor Johnson's message, and the report of commissioners.

IN HOUSE OF REPRESENTATIVES.

Whereas, The Savannah and Albany railroad company has been organized, under a charter granted by the State of Georgia, with the purpose, if a charter can be obtained from the State of Alabama, of connecting the Atlantic ocean, at Savannah, with the Gulf of Mexico, at Mobile, in, as nearly as practicable, a straight line between the two cities, with such branch roads as may be necessary: And whereas, This line, passing through the southern part of Georgia and Alabama, would be the means of furnishing a very large and fertile district of country, which must otherwise remain comparatively undeveloped, easy access to both the markets of the Gulf and those of the Atlantic: And whereas, Aside from the great local advantages to the termini and to the intermediate territory of the two States, it will accomplish a purpose, in the connexion of the Gulf with the Atlantic, which has ever been deemed of great national importance; therefore—

Resolved by the senate and house of representatives of the State of Georgia in general assembly met, That this general assembly do respectfully request the general assembly of the State of Alabama, if deemed consistent with the interests of that State, to grant a charter authorizing the construction of the Savannah and Albany railroad, from the line of Georgia on the Chattahoochee river, to the city of Mobile, Alabama.

Resolved, That his excellency the governor be authorized to appoint two suitable persons to communicate the views herein expressed to the general assembly of the State of Alabama.

SECRETARY OF STATE'S OFFICE,
Milledgeville, November 28, 1853.

I, E. P. Watkins, secretary of the State of Georgia, do hereby certify that the foregoing preamble and resolutions have been adopted by both branches of the legislature of the State of Georgia, and approved by the governor of said State.

[SEAL.] Given under my hand and seal of office.

E. P. WATKINS,
Secretary of State.

GOVERNOR'S MESSAGE.

EXECUTIVE CHAMBER, MILLEDGEVILLE, GEORGIA,
January 14, 1854.

To the Senate and House of Representatives:

In pursuance of a resolution adopted by the general assembly at its present session, I appointed James P. Scriven, of Chatham, and Nelson Tift, of Baker, commissioners on the part of this State to attend

the legislature of Alabama, now sitting, to procure a charter from that State authorizing the extension of the contemplated Savannah and Albany railroad from the Chattahoochee to the city of Mobile. These gentlemen have executed their mission; and the result is as creditable to their intelligence and promptitude, as it is evincive of the enterprise and fraternal feeling of our sister State.

I have the honor herewith to transmit the report made to this department by the commissioners, with accompanying papers, which show the proceedings of the State of Alabama on the subject of their mission.

The marked courtesy with which they were received, and the polite attentions to them by the public functionaries of Alabama, are worthy of perpetual memorial. They are the offspring of that deep patriotic sympathy between the members of our great republic which is the bond of our union and the guarantee of our future prosperity and glory.

Of the value of the enterprise itself it is needless to speak. I could add nothing to the forcible views presented in the report of the commissioners. When completed it will not only unite Alabama and Georgia in bonds of closer intercourse, but it will constitute an important link in the great chain of communication between the Pacific and Atlantic, pouring prosperity into the lap of our seaports and scattering rich blessings throughout the territory of southwestern Georgia.

HERSCHEL V. JOHNSON.

REPORT OF THE COMMISSIONERS.

GEORGIA, *December 31, 1853.*

The undersigned, according to the commission of your excellency and the joint resolutions of the general assembly of Georgia, under which we were appointed, proceeded to Montgomery, Alabama, and on the 11th of December communicated to his excellency Henry W. Collier, governor of Alabama, our commission and the joint resolutions of the general assembly of Georgia, requesting the State of Alabama to grant a charter to the Savannah and Albany Railroad Company, to extend their railroad to the city of Mobile. On the 13th of December, Governor Collier communicated the Georgia resolutions to both branches of the general assembly of Alabama, together with a message recommending that the desired charter be granted "at the request of our honored elder sister," on the ground of "courtesy and comity due to fraternal relations and political connexion—to the march of progress and our mutual efforts to advance;" and the message concludes with an expression of faith in the integrity and honor of Georgia, which we trust she will never cease to merit. "Let us," says Governor Collier, "act with liberality in the confidence that our sister, always ambitious of high position and cherishing a spirit which prompts to generous and disinterested acts, will never blur her escutcheon by refusing a similar favor." The message and resolutions were referred to

the Committee on Internal Improvement and Navigation in each House, and after consultation with us, a bill was agreed upon and its passage recommended. The bill passed both Houses of the general assembly on the 20th, and received the approval and signature of the governor on the 21st of December.

As a mark of respect to the State of Georgia, resolutions were passed in both houses of the general assembly, under which committees were appointed to introduce us and invite us to privileged seats. We should do injustice to our own feelings did we omit to mention the kindness exhibited to us personally by Governor Collier, Hon. Mr. Martin, President of the Senate; Hon. Mr. Gerritt, Speaker of the House; Hon. Mr. Bethea, Chairman of the Committee on Internal Improvements in the Senate; Hon. Mr. Curry, Chairman of Internal Improvements in the House, and the other members of the general assembly with whom we became acquainted.

In conclusion, permit us to congratulate the States of Georgia and Alabama on the prospective consummation of this new bond of friendship and mutual interest. The road now authorized by Georgia and Alabama will connect the Atlantic at Savannah with the Gulf at Mobile, in a nearly straight line, about 450 miles in length, accomplishing a great national object, as well as conferring incalculable benefits upon the two States, by increasing their population, their productions, their wealth, and the commerce of their respective seaboard cities. Nor is the branch road authorized from Albany through Eufaula to Montgomery of scarcely less importance. The branch road will be about 150 miles long, and the entire distance from Montgomery to Savannah 340 miles, a shorter distance by many miles than any other route to the Atlantic. The branch road will run through a fertile country, now comparatively distant from market, and will penetrate nearly to the rich and inexhaustible coal fields and iron mines of Alabama. When this road shall be built, and a road from Montgomery to the heart of the coal region—some eighty miles—coal, we are told, may be delivered to the road at \$1 per ton; and, estimating freight to Savannah at the rate coal is carried on a northern road—\$1 per ton per 100 miles—the coal of Alabama may be delivered in Savannah at \$5 50 per ton. If we add fifty per cent. to the cost of the coal and transportation, it may even then be delivered in Savannah at \$7 50 per ton. Those who have observed the recent rapid increase of steam-propelled vessels, for commercial as well as for war purposes, cannot doubt the necessity of an abundant and cheap supply of coal to any port which would be a great mart for the commerce of the world.

If we look beyond the lines of road under consideration, a continuous line is projected from Savannah, through Charleston, to the northern cities. On the other side a road is projected, and has been surveyed from Mobile to New Orleans; a road is being constructed from New Orleans westward; and we have reason to anticipate that this line will, at no very distant time, be united near the 32d degree of north latitude in Texas, with a line from Montgomery, in a common trunk road, to San Diego, on the Pacific. In that event, passengers by either Montgomery or Mobile may reach the Pacific from Savannah within four days. The Savannah and Albany railroad from Sa-

vannah to Mobile, and the branch road from Albany to Montgomery, will be important links in this great chain of connexion. But, aside from this, they are of very great importance to the federal government, as well as to the States of Georgia and Alabama, and each should do whatever it may, consistently with correct principles, to aid its progress and secure its early completion.

We transmit herewith copies of the papers above referred to—our letter to Governor Collier, Governor Collier's message to the senate and house of representatives, and the charter granted by the State of Alabama.

With sentiments of respect and esteem, your obedient servants,

JAMES P. SCRIVEN,

NELSON TIFT,

Commissioners.

His Excellency H. V. JOHNSON, *Governor.*

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1857.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill S. 595.]

The Committee on Private Land Claims, to whom was referred S. bill 595, "a bill for the relief of Daniel Whitney," have had the same under consideration, and submit the following report:

That they have examined the papers and proofs accompanying said bill, and contained in the American State Papers, and find that on the 15th day of September, 1823, Francis Lavonture presented to the commissioners appointed under the act of 1823 to hear and determine the claims of persons to tracts of land occupied and cultivated by them in the Green Bay settlement on the 1st of July, 1812, his claim, and the testimony to support it, to a tract of land described as follows:

"Commencing at low-water mark on Fox river, and running west eighty arpents, or so far as to make said claim contain six hundred and forty acres, as confirmed by said commissioners; and bounded on the south by a certain tract occupied by the United States garrison; west and north by wild or uncultivated lands; and east by Fox river, being 16 arpents in breadth."

That the said commissioners decided that the claim be confirmed, and that it was not in conflict with any confirmation before made, (vol. 4 Am. State Papers, Green's edition,) and that they gave their certificate to the correctness of the proceedings had before them. That although by the act those proceedings confirmed and made perfect the title, vesting the same in the said Lavonture, yet the said tract of land was embraced in a report made by the said commissioners to the Secretary of the Treasury upon all the unsettled claims in Michigan.

That the Secretary of the Treasury, instead of executing or carrying into effect the law of 1823, and instead of selecting the doubtful and uncertain claims from those which were confirmed, decided to lay all the claims before Congress, and submit all the decisions of the commissioners to it for supervision, refusing to cause the claims actually confirmed by law to be surveyed, and patents to be issued to the claimants.

That on the 17th of April, 1828, Congress passed an act to confirm certain claims passed upon by the commissioners, excluding

those in the county of Michilimackinac, and also certain lands occupied by the United States for military purposes. That about the time of the passage of this act, the President of the United States (upon erroneous representations) was induced to make a large military reservation of land, in the vicinity of Fort Howard, at Green Bay, amounting to five or six thousand acres. In this tract was included the land of Francis Lavonture. The confirmatory act of 1828 was therefore of no benefit to him, in procuring him the evidence of his title, as the Secretary, after its passage, refused the patent because his land was thus embraced in the reservation.

That the title to the land continues in this condition, although the post, as a military station for troops, has been abandoned, and every part of the reservation has ceased to be occupied for military or government purposes; that the lands are not now required for such purposes, notice having been given during the year 1854, by the Secretary of War, for their sale; and that no compensation was ever made to the said Francis Lavonture for thus taking his land.

The action of the War Department seems to render it necessary, to relieve the claimants, to pray for an act of Congress in their behalf.

From the facts above set forth, the committee are of opinion that the said Lavonture, or his legal representative, is entitled to the confirmation of his title; they therefore report back the bill without amendment, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1857.—Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany bill S. 634.]

The Committee on Pensions, to whom was referred the petition of Huldah Butler, daughter of John Brown, an officer in the army of the Revolution, having had the same under consideration, respectfully report:

John Brown, the father of the petitioner, rendered distinguished services to the cause of American independence, preceding and during the war of the Revolution. In February, 1775, he went on a mission to Canada, and, it is believed, made the first suggestion which is on record of the plan of seizing Fort Ticonderoga. He was a volunteer in the expedition which captured that fort, in May, 1775, and is spoken of as having distinguished himself both in council and in action. At a subsequent period, having attained the rank of major, he was placed by General Montgomery in command of the first detachment, which entered Canada in advance of the main army, and took Fort Chamblee.

Botta says: "Col. Allen and Major Brown, both officers of real talent, concerted the project of surprising the city of Montreal." Major Brown also commanded a corps at the siege of Quebec. Judge Marshall, in his life of Washington, makes honorable mention of Major Brown's services in Canada. On the 29th of July, 1776, as appears by the resolutions of Congress of that date, he was commissioned a lieutenant colonel. He resigned his commission, and that resignation was accepted by Congress in the following year, but continued to render service from time to time in the militia, and as a volunteer, till the fall of the year 1780. In the campaign of 1777, in cutting off the facilities for General Burgoyne's retreat, his conduct is spoken of in terms of marked commendation. The reason for Colonel Brown's resignation of his commission in the continental line is not fully apparent to the committee. There are reasons for believing it was occasioned by a controversy which he had with General Arnold, with whom he served, and whose character he seems to have perfectly understood. In a card published by Colonel Brown, previous to resigning his commission, alluding to General Arnold, he

concludes with these remarkable words: "Money is that man's god. and to get enough of it he would sacrifice his country."

In the fall of the year 1780 Col. Brown left his home, in Pittsfield, Mass., to visit Albany, N. Y., on private business. He there met Col. Ashley, who had been ordered on an expedition up the Mohawk river to relieve Gen. Schuyler. Col. Ashley, being sick, prevailed on Col. Brown to take his equipments and the command of his regiment, which he did, under the orders of Gen. Van Rensselaer. His guide proved to be a traitor, and led the party into an ambuscade of Canadians, tories, and Indians, at Stone Arabia, or Palestine, as it is now called, where he was killed in the battle of October 19th, 1780. He was thirty-six years of age, and left a wife and several children. The petitioner is his sole surviving child, is a widow, over eighty-three years old, and poor.

The Hon. Mr. Minot, late Commissioner of Pensions, with whom the committee have communicated, writes as follows:

"It is perfectly clear that, under the existing acts of Congress, the petitioner has no legal claim upon the United States. I need not add, what the papers in the case abundantly show, that Col. Brown's character and services were so meritorious, that if the case stood alone, I should regard this as an instance eloquently invoking legislative interposition. Col. Brown was slain by the enemy while engaged upon an enterprise into which he had been led to volunteer his services, in a manner at once generous and patriotic. The question whether Congress will not, by extending the relief asked, open the door to numerous other applications of a similar character, if not of equal merit; and whether, if such should be the result, more than justice would be done, is one which, it being my duty only to execute the laws as they are, I must leave to the discretion of the committee and of Congress."

Your committee are of opinion that, under the peculiar circumstances of this case, relief ought to be granted. They think that the petitioner should receive the half-pay for seven years, provided for by the resolution of the old Congress, of August 24, 1780. They therefore report a bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 27, 1857.—Ordered to be printed.

Mr. BRODHEAD made the following

REPORT.

[To accompany bill S. 637.]

The Committee of Claims, to whom was referred the petition of John B. and Thomas Johnson, report :

It appears, from the papers in the case, that on the 16th of June, 1840, John Julian Morse entered, at the land office at Jackson, Arkansas, the southwest fractional quarter of section No. 32, in township No. 7, north of range 20, under the pre-emption act of 1838, and in the following January (1841) the petitioners, believing that Morse had acquired a good title, by virtue of said certificate, purchased the same of him for \$2,000, and took possession of the land. On application to the General Land Office for a warrant, (as it appears,) it was discovered that the same land had been previously entered at private sale, at Fayetteville, in November, 1837, whilst the land was situated in that district, by F. Sagrain, to whom a patent was issued. In notifying the claimants of this fact, the Commissioner of the General Land Office (through Hon. Mr. Fulton) says: "It is, however, discovered that Sagrain's entry was void, since the land had never been offered at public sale, and that, therefore, as public land, was liable to the operation of the law of 1838. The proof of Mr. Morse shows a compliance with the provisions of the law," and the return of Sagrain's patent was directed with the view of issuing one to these claimants.

Subsequent investigation, however, proved that the Commissioner was in error; that the tract of land had been previously offered at public sale, and that the patent had been legally and properly issued to Sagrain.

In the meantime the claimants were induced, (as they state,) by the above statement of the Commissioner of the General Land Office, to contest Sagrain's claims, by which they were involved in suits, both in the law and equity courts, and put to great trouble and expense; and finally, finding they could not sustain their title, they compromised with Sagrain, and paid him \$1,000 for his title.

They ask that the government will indemnify them for their losses to the amount of \$2,500, on the ground that they were led into the proceedings, which resulted so unfortunately, by the mistaken

opinion of a public officer ; and on the further ground that their grantor has died insolvent, and left them without other remedy.

Under the peculiar circumstances of the case, the committee have come to the conclusion that the claimants are equitably entitled to some relief, and report a bill accordingly, allowing them \$1,000.



IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1857.—Ordered to be printed.

Mr. WELLER made the following

REPORT.

[To accompany bill S. 641.]

The Committee on Foreign Relations, to whom was referred the petition of Frederick A. Beelen, secretary of the United States legation to Chili, praying to be allowed the difference between his present salary, \$1,500 per annum, and \$2,000 per annum, from July 1, 1855, to January 1, 1857, have had the same under consideration, and now report :

It appears from the petition, that in August, 1854, Mr. Beelen was appointed secretary to the legation of the United States in Chili, with a salary of \$2,000 per annum. That he repaired to his post at once, and continued in the performance of its duties up to January 1, 1857. That some time in September, 1855, he received a communication from the Department of State, informing him that under the construction given by the Attorney General to the act of March 1, 1855, "To remodel the diplomatic and consular systems of the United States," his salary as secretary of legation at Santiago would be only at the rate of \$1,500 per annum from the 1st of July of that year. That the law reducing his salary thus had the effect of an *ex post facto* law upon him. That the lowest cost of reaching his post from the United States is \$500, and the same amount paid in returning home makes a sum equal to two-thirds of the salary for a whole year. That he is the only officer in the diplomatic service of the government whose salary was reduced by the act above named, and prays that he may be allowed the difference between \$1,500 and \$2,000 per annum, the amount of salary attached to his office when he accepted it, from July 1, 1855, when the act referred to went into effect, to January 1, 1857.

The statements of the petition are fully sustained by a letter from the Department of State, dated February 23, 1857, in which the Secretary adds: "That the reduction of Mr. Beelen's salary from \$2,000 to \$1,500, whilst he was at a remote capital, and in the actual discharge of his official duties, has always been regarded by this department as a case of peculiar hardship, which was aggravated by the fact that it was not in the power of the Secretary of State to inform Mr. Beelen of the construction placed by the Attorney General upon the law affecting his salary until after the law was in actual opera-

tion, of which Mr. Beelen could not, therefore, be aware until from fifty to sixty days after the reduction of salary took place."

The committee are of opinion that, under the peculiar circumstances of this case, the relief asked for is reasonable and should be allowed. They therefore report a bill in his favor, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1857.—Ordered to be printed.

Mr. PUGH made the following

REPORT.

[To accompany bill H. R. No. 642.]

The Committee on the Judiciary, which was instructed to examine the papers communicated by the Secretary of the Treasury, in relation to the claim of George Whitman, herewith reports a bill for payment of the sum alleged to be due.

On the 11th of August, 1838, Amos Kendall, Postmaster General, drew a bill of exchange on W. H. Ker, postmaster at New Orleans, payable to George Whitman or order, for twelve thousand one hundred dollars. Whitman was a contractor for carrying the mails between Mobile and New Orleans, and the bill was for the balance due him on the 30th of June, 1838, as such contractor.

The bill was presented to the drawee at New Orleans in a reasonable time, and payment thereof refused. It was then endorsed by Whitman, and discounted, for his benefit, by the Bank of Orleans. On the 9th of September, 1839, it was presented to the Postmaster General for redemption, and its allowance declined, upon the ground that Whitman had not returned the bill to the department at Washington within the next calendar quarter after its presentment to the drawee, as required by the letter enclosing it to him, and that, in consequence, a "positive public injury" had accrued.

This injury arose from a report made to the department by the postmaster at New Orleans, in September, 1838, that he had paid the bill; upon the faith of which, the department credited him for the amount on its books, without requiring the bill or any receipt or other voucher to be exhibited.

If either the second section of the act approved January 31, 1823, (Statutes at Large, vol. 3, p. 723 ;) or the first section of the act approved March 3, 1825, (Statutes at Large, vol. 5, p. 102,) is applicable to the case, as the Attorney General seems to suppose, the department was altogether at fault, and the "positive public injury" arose from the misconduct of its own officers. The committee does not inquire at present how far those statutes, or either of them, should be applied; since, if there had been no express regulation upon the subject, it was inexcusable carelessness, *crassa negligentia*, for the officers of the department to credit Mr. Ker with the amount of a negotiable bill of exchange, unless on production of that bill or proof that it had been paid.

The two pretexts above stated were adopted by Mr. Whittlesey, Sixth Auditor, on the 14th of February, 1842, as the reasons upon which he rejected the bill when presented a second time for redemption.

At this period, it appears, the bill was in the possession of the Bank of the United States, as the endorser of the Bank of Orleans. No appeal was prosecuted upon Mr. Whittlesey's decision; but, instead, the Bank of the United States returned the bill to the Bank of Orleans, and the latter called on Whitman, as endorser, to redeem it. This he did, after inducing the bank to apply \$2,000 of Mr. Ker's funds, in its possession, as part payment.

In August, 1851, Mr. Farrelly, Sixth Auditor, re-examined the case upon an allegation of further testimony; but again was the decision adverse to Whitman's claim. An appeal was thereupon prosecuted to the First Comptroller; but, inasmuch as Mr. Whittlesey had once decided the case, as Sixth Auditor, he declined to hear and determine the appeal. Thus stood the case on the 13th of March, 1856, when Congress adopted the following joint resolution:

"That in every case of account or claim not finally adjusted, upon which the present First Comptroller of the Treasury, as Auditor of the Treasury for the Post Office Department, may have decided, which may have been thereafter examined by an auditor in said office on new testimony, and decided by him on such testimony, and from whose decision an appeal has been taken to the present First Comptroller of the Treasury, it shall be the duty of the Second Comptroller of the Treasury and the Commissioner of Customs finally to adjust the same; and, in case of disagreement between the said Second Comptroller and Commissioner of Customs, the decision of the Attorney General shall be as final as the decision of the First Comptroller would be, if he had acted upon the eighth section of the act of July 2d, 1836, concerning the organization of the Post Office Department."

The Second Comptroller and the Commissioner of Customs accordingly proceeded to examine Whitman's case; and thereupon, having disagreed in opinion, referred it to the Attorney General as umpire. That officer, in a letter dated June 25, 1856, has substantially refused to perform the duties imposed on him by the joint resolution. The committee does not propose to contravene, at present, the excuses assigned for this course, although it believes the joint resolution to have been entirely constitutional and proper, as well as in accordance with an ancient and well-considered precedent. After so many obstacles, and so much delay, the committee has deemed it an act of mere justice to examine the case of Whitman with a view to legislative relief, and has arrived at the conclusion that his claim ought to be paid.

The first objection, as already stated, is, that the bill was enclosed to Whitman at New Orleans, in a letter directing him to return it (if not paid) within the next calendar quarter. On this ground both Mr. Kendall and Mr. Whittlesey declined to redeem the bill when presented to them. It is now proven, however, that the form of the letters in use by the department at that time contained no such direction.

Another objection is, that Whitman should have notified the department in August, 1838, of the presentment and dishonor of the bill. It is now proven, however, that the Postmaster General had previously refused to allow the expenses of protesting a similar bill for Whitman's benefit, and, in truth, dispensed with all the requisitions of the law merchant in that particular.

An effort has been made to avoid the conclusiveness of this by a distinction between the failure to give notice of non-payment and a failure to have the bill protested. Whatever the force of the distinction in some cases, it has none here. This was a foreign bill of exchange, and notice of non-payment could only be required after, and as a consequence of protest. The instruction of Mr. Kendall to Whitman, that bills drawn by the department upon postmasters should not be protested, was a substantial waiver of any notice of non-payment.

The recording officers seem to have relied much upon another consideration, namely, that if the bill had been returned in September, October, or November, 1838, the department would have been enabled to discover the falsity of Ker's report that he had paid it, and in time to prevent his subsequent defalcation. The committee cannot say whether this would or would not have had the latter consequence; nor is that material to the case. If Whitman was not bound to return the bill, (as he was not,) and if he was absolved from giving notice of non-payment, (as he was,) no "injury" to the public, arising from the mere exercise of his legal rights, can impair the justice of his claim.

As to the rest, if the officers of the department had performed their own duty under the law, the amount of this bill would never have been credited to Ker, nor, as the committee believes, would his defalcation have gone so long undetected.

It is certainly true that the failure to return the bill to the department, for a period of twelve months, did furnish some presumption of unfairness on the part of Whitman or his endorser. But the peculiar circumstances of this transaction are so fully explained in the statement of Hon. Thomas G. Davidson, April 5, 1856, as to rebut and forever silence that presumption.

The committee does not deem it worth while to allude to the vast number of collateral, subordinate, and (in the main) immaterial questions of usage, fact, and regulation, upon which the accounting officers and the Attorney General have dwelt at such length. The substance of the case has been related, as have also the principles of law by which, in the committee's opinion, it should be decided.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 28, 1857 —Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany bill S. 643.]

The Committee on Public Lands, to whom was referred the petition of George S. Seton, praying that Congress may grant him the additional land to which he is entitled under a decree of the Supreme Court of the United States, report :

It appears that on the 26th day of April, 1816, Charles Seton applied, by petition, to the governor of the province of East Florida, then under the dominion of the King of Spain, for leave to build a water saw-mill on Nassau river, in East Florida, at a place called Roundabout, and for the right to the quantity of land which was customary for his supply of timber ; that, on the 6th of May, 1816, the governor made the concession to said Seton, as prayed for in his petition.

On the 8th of May following, the governor, in consideration (as he states in his decree made on said petition) of the benefit and utility which would redound to the improvement of the province, if what Charles Seton proposed should be carried into effect, granted to him, without injury to a third person, that he might build a water saw-mill at the place at which he solicited ; but with the express condition, that, until he should establish said mill, said concession should be considered as not made, and without any value or effect until that event took place ; that then, in order that he might not be injured by the increased expenses which he was preparing to incur, he might make use of the pine trees which were included in the square of five miles, (16,000 acres.)

That said Charles Seton, in compliance with the conditions of said concession, built said sawmill in 1817 or 1818. That the validity of said claim was confirmed by the Supreme Court of the United States, at the January term in 1836, as appears by the decree rendered thereon.—(See Peters' Report, volume 10, page 309.)

In pursuance of said decree of the Supreme Court of the United States, the surveyor general of Florida proceeded to have said grant surveyed, and, after the same was completed, it appeared that it included within its limits confirmed grants to other parties to the amount of 3,480 acres of land, which amount was deducted from

Seton's claim, leaving him 12,516 acres, in lieu of 16,000 acres, which he claimed under said decree of the Supreme Court of the United States.

The petitioner claims that the surveyor did not follow out the *old lines*, as called for in said concession or grant, as it was his duty to do, (after first establishing said lines,) but surveyed it by new lines, and thereby deprived said Seton of 3,480 acres of land, which he claims said Seton would have received had the old lines been followed.

The committee, therefore, report the accompanying bill for the relief of said legal representatives.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1857.—Submitted and ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of George V. Vandiver, asking Congress to grant him a pension as an invalid, beg leave to report:

That petitioner claims a pension for disability alleged to have been incurred in the military service of the United States; that he enlisted in Captain King's company, on or about the first day of May, 1838, to remove the Cherokee Indians from Georgia to Arkansas; was in said service two months, during which time he was injured by cold from the measles, taken in the service, which rendered him unable for military duty, has terminated in what his physicians call pulmonary consumption, and has incapacitated him from manual labor. James Merritt, who was a first lieutenant in said King's company, certifies 'that the applicant served from the first day of May, 1838, to July in the same year, in removing the Cherokee Indians from Georgia to Arkansas, in Captain King's company; and while employed in said service, and in the line of his duty, between those dates, he was injured by cold from measles taken in the service, from which he has become very unhealthy and consumptive in the lungs which rendered him unable to perform military duty or manual labor, and that he was a sound and healthy man before he went into the service, and was honorably discharged on or about the 1st July, 1838.' Two physicians certify to his present disability, stating it to be confirmed pulmonary consumption, and that he is two-thirds disabled. On the 13th May, 1853, said Merritt made a second affidavit, in which he corroborates the testimony of five other witnesses as to the fact that petitioner was a sound and healthy man when he entered the service, and that his present indisposition, in their opinion, is the result of his sickness in the army. The muster-rolls of the company to which applicant belonged show that he was mustered into the service on the 22d day of May, 1838, and mustered out 26th June, 1838. He is reported present for duty during that time, but furnishes no evidence that he was sick while in the service. Thus, it will be seen that the rolls do not corroborate either the application of the petitioner or the testimony of his witnesses. The rolls not only report him present but present for duty.

The record evidence on the rolls was made at the time, and during the service rendered by applicant, and by officers under oath. After a lapse of sixteen years, subordinates of said company appear as witnesses to destroy the credibility of the official records of said company. It appears the witnesses were unable to name the date of enlistment and discharge of applicant correctly; they have also failed to detail the time or place where the alleged sickness occurred, applicant does not attempt to show the mode of life and employment of claimant since he left the service. The testimony offered in support of the application is deemed altogether insufficient to show that the alleged disability of the claimant is to be ascribed solely to the cold he is said to have taken while in the service.

After a careful examination of the testimony in this case, your committee recommend the adoption of the following resolution:

Resolved, That the prayer of petitioner be rejected.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1857.—Submitted and ordered to be printed.

Mr. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the memorial of Mrs. Sarah Ann Roose, widow of John J. Roose, deceased, praying Congress to grant an increase and continuance of pension, have had the same under consideration and submit the following report :

That the subjoined letter of the Hon. Geo. C. Whiting, Commissioner of Pensions, exhibits the facts, and expresses the same opinions of the committee ; it is therefore made a part of this report.

PENSION OFFICE,
February 14, 1857.

SIR : The petition of Mrs. Sarah Ann Roose, widow of John J. Roose, deceased, I have the honor to return herewith.

Her husband died on the 1st of June, 1852, and having shown, by the necessary evidence, that his death was the result of disease contracted during the war with Mexico, she was pensioned from that date, for five years, at the rate of \$3 50 per month, the half pay proper of a private.

She asks that Congress may allow her a pension at the rate of half a sergeant's pay ; that she may be pensioned from the date of his discharge ; and that her stipend be continued after the present five years shall have expired.

In regard to the increase of the pension to half the pay of a sergeant, it may be stated that there is no official evidence of his having served in that grade. The rolls in this office, as well as in that of the adjutant general, and his original discharge on file, represent him to have been a private at the date of his leaving the service.

She has no claim to pay from the date of his discharge, as the law does not authorize the pension to commence until the date of the husband's death. He made no application during his life for an invalid pension ; and had he done so, and succeeded in establishing his claim, payment could have commenced only from the date of the completion of the testimony.

Her pension can be renewed at this office, under the act of February 3, 1853, for five years longer, when it shall have ceased on the first of June next, without the further action of Congress.

(Signed by Commissioner.)

Hon. GEO. W. JONES.

Your committee, therefore, ask leave to report back the papers to the Senate, and that they be discharged from the further consideration of the subject.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1857.—Submitted and ordered to be printed.

MR. JONES, of Iowa, made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Sarah S. Hine, widow of the late Lieutenant E. Curtiss Hine, who was lost in the revenue cutter Hamilton, beg leave to report:

That there is no evidence adduced to show that the husband of petitioner ever was in any public service either naval or military. The statement made by the applicant is not verified. There is no evidence in the proper department of the alleged service. It has not been the practice of Congress to grant pensions for service rendered of the character set forth by the petitioner. Therefore your committee recommend the adoption of the following resolution:

Resolved, That the prayer of the petitioner be rejected.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1857.—Submitted, agreed to, and ordered to be printed.

Mr. TOOMBS made the following

REPORT.

The Committee on the Judiciary, to whom was referred the following statement, submitted to the Senate by the President pro tempore, report :

The President of the Senate *pro tempore* states to the Senate that questions have arisen before him on the construction of the act "to regulate the compensation of members of Congress," approved 16th August, 1856, which affect the compensation of certain senators who have been chosen since the commencement of the first and of the present session of this Congress, respectively, as to the time when the compensation of each should commence, and of the mileage properly to be allowed, which the President *pro tempore* desires should be submitted to the Senate.

The first section of the compensation act of the 16th August, 1856, provides "that the compensation of each senator, representative, and delegate in Congress shall be six thousand dollars for each Congress, and mileage, as now provided by law, for two sessions only, to be paid in manner following, to wit: on the first day of each regular session each senator, representative, and delegate shall receive his mileage for one session; and on the first day of each month thereafter, during such session, compensation at the rate of three thousand dollars per annum during the continuance of such session; and at the end of such session he shall receive the residue of his salary due to him at such time, at the rate aforesaid, still unpaid; and at the beginning of the second regular session of the Congress, each senator, representative, and delegate shall receive his mileage for such second session, and monthly, during such session, compensation at the rate of three thousand dollars per annum, till the fourth day of March, terminating the Congress, and on that day each senator, representative, and delegate shall be entitled to receive any balance of the six thousand dollars not theretofore paid in the said monthly instalments, as above directed."

The fourth section of the act provides, "that in the event of the death of any senator, representative, or delegate, prior to the commencement of the first session of the Congress, he shall be neither entitled to mileage or compensation; and in the event of death after the

commencement of any session, his representatives shall be entitled to receive so much of his compensation, computed at the rate of three thousand dollars per annum, as he may not have received, and any mileage that may have actually accrued and be due and unpaid."

The act with reasonable certainty provides for all members of either House who were legally entitled to sit at the commencement of the first regular session of each Congress, and does not very clearly provide for any others; and it is by no means clear that any others are fully within its benefits. But, assuming that the act intended to embrace the whole subject, your committee proceeded to try the rights of the cases submitted to them by this test: though the act declares that the salary of each member of Congress shall be six thousand dollars for each Congress, it provides that it shall be paid in a particular manner, only during or at the end of each session of Congress, except in the case of the death of a sitting member after a session has begun, and at the rate of three thousand dollars per annum. Therefore, he who serves the whole of each session of Congress is entitled to the whole six thousand; he who is legally entitled to serve during the whole of each session, and is prevented by the sickness of himself or family from doing so, is also entitled to the whole six thousand dollars, and none others. But these two classes are entitled to the whole compensation under this act. None of the cases submitted to us come within either of these classes, and are, therefore, excluded. In case of the death of a member after the beginning of the 1st session, his personal representative is entitled to receive all the compensation (not received by him) which has accrued at the time of death, computed at the rate of \$3,000 per annum, and his successor could in no event be entitled to more than the residue of the \$6,000 not paid to the deceased member or his personal representative. None of the cases submitted belong to this class, but it furnishes a rule of construction which your committee believe will truly discover the intent of the act. There is nothing in the act itself which would warrant the application of a different rule of compensation to a member who fills a vacancy happening in any other manner different from one happening on the death of a sitting member after the commencement of a session: nor are we able outside of the act to discover any sound reason for such different construction. Though the mode of payment is by annual salary, the consideration therefor, in the contemplation of the act, was performance of the duties of a member of Congress when in actual session, and the times of payment seems to have been fixed during or at the end of each session, with special reference to securing this consideration. It is true that the act is not well guarded, as it may happen that a member of Congress who may never serve a single day, if legally entitled to sit during the whole Congress, may receive the whole six thousand dollars, lessened only by a deduction of his daily pay for each day he may absent himself from the sittings of the house of which he is a member. This is an evil, but one that the act itself does not remedy; but a person who has no right by law to perform the duties of a member of Congress, during any of its sessions from any given year, is not entitled by this act to any compensation for that year. He not only does not perform the condition, but is

legally incompetent to do so. Testing the cases submitted to us by those principles, we find the rule of compensation, in all cases of election after the first day of the first regular session, to be, that the compensation does not commence until after election, and from thence to the end of the term, at the rate of three thousand dollars per annum. This rule, in the opinion of your committee, applies to the cases of Messrs. Nourse, Gwin, Green, and Fitch. The case of Mr. Bigler is somewhat different. He was elected after the time fixed by law for the commencement of the first regular session of this Congress, but before the organization of the two Houses, and was in his seat the day the Congress entered upon its legislative duties; therefore, if not within the strict letter of the law, he is certainly within its equity, and your committee therefore recommend that he be paid for the whole Congress, deducting all the days he was absent, except for the time excused by the law.

We also consider that the question of mileage is settled by the same rule of construction, and that no person but a member of Congress at the time the journey ought to be performed, can, by any possibility, receive the mileage provided by the law.

IN THE SENATE OF THE UNITED STATES.

[To accompany bill H. R. No. 598.]

MARCH 2, 1857.—Ordered to be printed.

Mr. THOMSON, of New Jersey, made the following

REPORT.

The Committee on Pensions, to whom was referred House bill No. 598, entitled "An act for the relief of the heirs of Amos Oney, a revolutionary soldier," beg leave to report:

That the said Amos Oney, in his lifetime, applied for a pension to be allowed him for services rendered in the years 1775, 1776, and 1777, during the war of the revolution, under the act of 7th June, 1832, which was suspended by the Pension Department for want of sufficient proof, and now, after a lapse of eleven years after his death, and eighty years after the alleged service was rendered, his heirs ask Congress to grant them arrears, and House bill No. 598 does grant them pay from 1831 to 12th day of December, 1846. The evidence adduced since application was made by said Oney in 1837 for a pension is second hand, or hearsay, and not reliable.

Therefore, your committee unanimously recommend the following resolution:

Resolved, That H. R. No. 598, entitled "An act for the relief of Amos Oney," be indefinitely postponed.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1857;—Ordered to be printed.

Mr. RUSK made the following

REPORT.

[To accompany bill S. 644.]

The Committee on the Post Office and Post Roads, to whom was referred the memorial of Marshall O. Roberts and others, trustees, &c., have had the same under consideration, and respectfully report:

That the contract with A. G. Sloo was executed on the 20th April, 1847, and was assigned to George Law and others on the 3d of September following; it required the transportation of the mails in steamships from New York to New Orleans twice a month and back, touching at Charleston, (if practicable,) Savannah, and Havana; and twice a month from Havana to Chagres and back.—(*Vide U. S. Statutes at Large, vol. 9, page 187.*) A copy of the contract is hereto appended:

THE SLOO CONTRACT.

This agreement, made at the city of Washington, in the District of Columbia, this twentieth day of April, anno Domini eighteen hundred and forty-seven, between the United States of America, by the Secretary of the Navy thereof, and Albert G. Sloo, of the city of Cincinnati, in the State of Ohio, witnesseth: That whereas, by the 4th section of an act of Congress, approved March 3d, 1847, entitled "An act providing for the building and equipment of four naval steamships," it is made the duty of the said Secretary of the Navy, upon certain terms and conditions in said act enumerated, to contract, on the part of the government of the United States, with the said A. G. Sloo for the transportation of the United States mail from New York to New Orleans twice a month and back, touching at Charleston, (if practicable,) Savannah, and Havana, and from Havana to Chagres and back, twice a month. Now, therefore, the said A. G. Sloo does hereby agree with the United States aforesaid, and firmly binds himself to establish a line of steamships, to consist of at least five vessels, for the transportation of the United States mail from New York to New Orleans, twice a month and back, touching at Charleston, (if practicable,) Savannah, and Havana, and from Havana to Chagres and back, twice a month, according to the terms and meaning of said act of Congress. The said steamships

to be of not less than fifteen hundred tons burden, and propelled by engines of not less than one thousand horse-power each, to be constructed under the superintendence and direction of a naval constructor, in the employ of the Navy Department, and to be so constructed as to render them convertible, at the least possible expense, into war steamers of the first class: provided, however, that the Secretary of the Navy may, at his discretion, permit one of said steamships to be constructed of not less than six hundred tons burden, and engines in proportion.

And it is agreed, by and between the parties aforesaid, that two of the said steamships shall be completed, and ready for service on or before the first day of October, A. D. 1848, shall be of the burden (1,500 tons) above described, and shall be propelled by engines of direct action, similar to the engine of the late United States steamer Missouri; and each of said ships shall be constructed of approved materials and fastenings, upon the dimensions of the late steamship Missouri, as they are known and on record in the Navy Department of the United States, reserving to said contractor the right to add a saloon deck in said steamers, to add to their length not exceeding thirty feet, and breadth of beam not exceeding five feet, as may be necessary to give them the draft of water required by law for the service intended, and reserving to the contractor, also, the right to add two feet to the length of cylinder above provided for, so as to make the same 70 inches in diameter and 12 feet stroke; but, in making any of all of the alterations here permitted, from the plan of the Missouri aforesaid, the said contractor is not to disregard the general proportions of the steamships so to be constructed, but is to have reference to them and to make the corresponding changes, in order to preserve them, which may be required for the purpose, by his said alterations; and said ships shall be sheathed with copper of approved quality, shall have ample and convenient capacity for the accommodation of men and stores of every description; shall be well and thoroughly fitted with not less than three masts and the necessary spars, ropes, rigging, and canvass; shall be furnished and fitted with good and sufficient ground tackle, chain and hempen cables, anchors and hawsers, with iron side-wheels, with good and sufficient boilers, and coal-bins for a supply of twenty days, and with all the fixtures and findings properly belonging to steamships of the dimensions and character above recited. The said boilers and machinery are to be of the best quality, and to be so placed below the water-line as to be, as far as practicable, beyond the reach of cannon shot; and the said steamers, in strength, capacity, rigging, spars, engines, boilers, and in all other respects whatsoever, are to be similar to the late United States ship Missouri, as far as the alterations above permitted, and a reasonable regard to the nature of the service contemplated, will allow.

And it is further agreed, by and between the parties aforesaid, that, should the Secretary of the Navy determine to employ a steamer of not less than six hundred tons burden, for the service between Havana and Chagres, in lieu of one of said five steamers of fifteen hundred tons, as provided in the fourth section of the act of Congress hereinbefore referred to, then the said A. G. Sloo will construct said

steamships of the same material, build, and finish, with size, engine, and dimensions in proportion, (having regard to tonnage to the above described ships,) and fully capable, in all respects, of performing the service and answering all the conditions required by said law.

And it is further agreed by and between the parties aforesaid that the said contractor, A. G. Sloo, shall complete and have in readiness for service the two remaining steamships provided in the act aforesaid, on or before the first day of October, A. D. 1849, to be constructed and fitted in every respect of the burden, capacity, power and description of the two steamships first hereinabove described, with such improvements in model, engines, boilers, and finish as may be approved by the parties to this contract. And said line of steamships shall be kept up by alterations, repairs, or additions (of approved character) fully equal to the exigencies of the service and the faithful accomplishment of the purposes recited in said act; shall perform the services required by said act according to its true intent and meaning, and shall be in full and entire operation on or before the first day of October, A. D. 1849.

And it is further agreed by and between said parties, that each and all of said steamships shall be commanded by an officer of the navy of the United States, not below the grade of lieutenant, to be selected by the said contractor, A. G. Sloo, with the approval and consent of the Secretary of the Navy, and to be accommodated on board thereof in a manner becoming his rank and station, without charge to the government of the United States. *And said A. G. Sloo further agrees to receive on board each of said steamships, and accommodate in a manner suitable to their rank, without charge to the government of the United States, four passed midshipmen of the United States navy, to serve as watch officers; and also to receive on board each ship and suitably accommodate, without charge to the United States government, an agent, to be appointed by the Postmaster General, who shall have charge of the mails to be transported therein; safe and convenient apartments on board said ships being provided for said mails and agent by the said A. G. Sloo, contractor.*

And the said United States of America, by the said Secretary of the Navy, in consideration of the premises, do hereby promise and agree to pay to the said A. G. Sloo, contractor, as a compensation for the service hereinbefore stipulated, the just and *full sum of two hundred and ninety thousand dollars per annum*, payable in quarterly payments, upon the full performance by the said Sloo of the service aforesaid, according to the meaning of said act of Congress, and of this contract; and inasmuch as the said steamships will be completed at different periods respectively within the time above limited, it is hereby understood and agreed by the parties aforesaid that each of said ships shall commence the mail service required as soon as she shall be in all respects ready therefor, according to the terms of this contract, and that a proportionate part of said compensation stipulated for the whole service aforesaid shall be paid to said A. G. Sloo for the partial service which may thus be rendered by the steamer or steamers which may, as aforesaid, be first completed. But no compensation shall in any case be paid for any period prior to the time when such steam-

ships shall commence the actual performance of the service required by said act of Congress.

And it is further agreed by and between the parties aforesaid, that on tender of proper compensation by the said government of the United States, not exceeding a due proportion of the pay herein stipulated, the said A. G. Sloo, contractor, shall convey any mail or mails of the said United States which he may be required to convey on any steamship which he, the said Sloo, may own, run, or control on the routes aforesaid, beyond the number of trips herein specified.

And it is further agreed by and between said parties, that this contract shall continue in force for the term of ten years, according to the true intent and meaning thereof—the said ten years to commence from the actual commencement of the service above specified; and the said Secretary of the United States navy for the time being shall at all times exercise control over said steamships, and shall at any time have the right to take them for the exclusive use and service of the United States, and to direct such changes in their machinery and internal arrangements as the said Secretary may require, the cost of such changes to be ascertained by the bills actually paid therefor, and the proper compensation of the value of the ships when so taken as aforesaid to be ascertained by appraisers to be mutually chosen by the parties aforesaid.

In testimony of all which agreements and stipulations, the parties above named have hereunto signed their names and affixed their seals this twentieth day of April, anno Domini one thousand eight hundred and forty-seven.

A. G. SLOO, [L. S.]
J. Y. MASON, [L. S.]
Secretary of the Navy

Signed, sealed, and delivered }
in presence of }

As to the signature of Albert G. Sloo, [the words “as principal and as his sureties,” and the words “jointly and severally,” first erased by black lines, and the word “themselves” altered to “himself” before signing,]

GEO. L. STORER.

To J. Y. M.,

JOHN APPLETON.

The first change in the service was assented to on the 21st of April, 1851, by which the contractors were authorized to run their steamers *direct* between New York and Havana, without touching at Charleston and Savannah. This change, the Postmaster General states, relieved the contractors from some portion of their service; but was granted, as he also states, “with a view to afford greater despatch to the through mails between New York and California, and has served a good public purpose in expediting those mails.”

In the spring of 1851, the intercourse with California became so important and was so greatly increased, that a saving in time on the through passages was considered essential; accordingly the contractors ran a line direct from New Orleans to Aspinwall and back.

twice a month. The New York and California merchants desired that the through mails should be carried by the direct route, by which two days at least would be saved. The contractors were compelled, by their contract, to transport the mails by the Havana route. They expressed their readiness, however, to take them by the direct route also. The first letter on the subject, in the correspondence, was from Postmaster General Hall to Mr. Law, of the 23d of June, 1851, enclosing a letter from a New York merchant, complaining that the mails were not sent by the direct route. Mr. Law replied on the 25th of June, expressing a willingness to carry the mails by that route, if desired by the department. The Postmaster General replied, on the 1st of July, saying that this division of the mails, as he understood it, was to make no difference in regard to the expense. Mr. Law answered, on the 21st of July, saying that "he presumed it was not expected that the mails would be carried outward and homeward six times per month for the same sum for which the company contracted to carry them twice monthly;" still, that he was willing to perform the additional service, "in the confident expectation that a sense of justice would induce Congress to make such further provision as might be a reasonable compensation for it." No reply seems to have been made to this letter by the department, but it appears that the mails were regularly sent on board the steamers in conformity with this understanding, and the contractors considered that the condition was, that they should submit the question of compensation to Congress.

The next stage in the correspondence was in 1852, when it was proposed to run a direct line, not only from New York to Aspinwall and back, but also from New Orleans to Aspinwall and back, twice monthly. This line was commenced on the 16th July, 1852. The first letter on the subject was from the Postmaster General to Mr. Law on the 4th May of that year. Some twenty-two letters passed, from the last-mentioned date to the 24th June—the last of which was of the latter date, from Mr. King, the present First Assistant Postmaster General. It seems, from this correspondence, that the Postmaster General and the Secretary of the Navy stated that the condition on which the mails were to be carried by this route was the distinct understanding that the Post Office and Navy Departments would not *consent* to any allowance for it from the treasury; and that an application to Congress for increased compensation would not receive their *sanction*. *This was understood by the contractors to preclude their going to Congress on the question, and they declined to take the mails; but an explanatory letter from the Postmaster General to Mr. Aspinwall, of the 14th June, 1852, was understood by the contractors to leave the question of compensation to Congress, and the through California mails have accordingly been carried on this basis by the direct line between New York and Aspinwall until the present time, and by the direct line between New Orleans and Aspinwall until that line was discontinued. This is shown by the following letters:*

[Mr. Aspinwall to the Postmaster General, May 17, 1852.

Postmaster General to Mr. Aspinwall, May 18, 1852.

Joint letter, Mr. Aspinwall and Mr. Law to Postmaster General, May 25, 1852.

Postmaster General and Secretary of the Navy to Mr. Law, June 1 and 2, 1852.

Mr. Law to the Postmaster General, June 8, 1852.

Mr. Law to the Secretary of the Navy, June 10, 1852.

Postmaster General to Mr. Aspinwall, June 14, 1852.

Mr. Law to the Postmaster General, June 15, 1852.

Same to same, June 16, 1852.

Postmaster General to Mr. Brady, June 16, 1852.

Postmaster General to Mr. Law and Mr. Aspinwall and Secretary of Navy, June 18, 1852.

Mr. Croswell to the Postmaster General, June 23, 1852.

Postmaster General to Mr. Law, June 24, 1852.

Mr. Law to Postmaster General, and Mr. King to Postmaster General, June 24, 1852.]

The next stage in the correspondence was in 1853, when the intermediate or weekly through mail to California was commenced from New York to Aspinwall, and from New Orleans to Aspinwall, and back, direct. This weekly line was commenced on the 23d March, 1853, and was continued for some four months, but, having resulted in a serious loss to the contractors, was withdrawn. For this additional service, the contractors, under the more stringent conditions imposed by the present head of the Post Office Department, *do not present any claim to Congress for additional compensation.*

It seems, therefore, that the claim for such compensation is *for the direct mail transportation from New York to Aspinwall and back, twice a month, from July, 1851, to the present time; and from New Orleans to Aspinwall and back, twice a month, from July, 1852, to September 1, 1854.*

The Postmaster General, in his letter to the chairman of the committee, takes the ground that "neither the department nor the government has been justly subjected to any claim for additional compensation on account of extra mails which have been transported by the contractors, such additional mails having in all cases been conveyed with a distinct understanding that no additional expense should thereby be incurred *by the department.*" The correspondence shows that the understanding undoubtedly was, "that no additional expense should be incurred by the department," but that it was also understood that a claim for compensation would be made by the contractors; that they would present it for the consideration and decision of Congress; and that while the Post Office Department "declined to be responsible, either directly or indirectly, for any additional expense in the matter"—in other words, declined "to join in submitting the subject to Congress upon a question of increased compensation"—the contractors have actually performed the service, as stated by them at the commencement, "in the confident expectation that a sense of justice would induce Congress to make such further provision as would be a suitable compensation for it;" and that these facts being established, *the contractors have an equitable claim for such additional compensation as Congress shall deem just and reasonable.*

The committee report a bill, and recommend its passage.

Memorial of Marshall O. Roberts and others, trustees of A. G. Sloo, contractor for carrying the mails between New York, New Orleans, Havana and Chagres, praying additional compensation for extra mail facilities on that route.

To the honorable the Congress of the United States :

The memorial of the trustees under the contract between A. G. Sloo and the government of the United States respectfully shows :

That by the act of Congress of the 3d March, 1847, directing the Secretary of the Navy to contract with A. G. Sloo for the construction of five steamships suitable for naval or war purposes, or to transport the mail between New York, New Orleans, Havana, and Chagres, twice each month, the trustees aforesaid, in connexion with the United States Mail Steamship Company, assumed and entered upon the stipulations of the contract ; and they have built the ships and performed the service for seven years and upwards, not only in the manner provided in the contract, but, for more than half the period that has elapsed, to a far greater extent than the contract demanded.

To this end, in good faith, they have devoted their energies and the most liberal means. They entered upon the enterprise when the construction of large sea-going steamers had scarcely been attempted in this country, and they built some of the largest then known in the commerce of the world. They did so under great disadvantages, in the then inadequate condition of machine and engine works in this country.

The ships built by them have, in all respects, exceeded the requirements of the contract, being far larger and of greater strength and capacity, and in these respects better adapted to the naval service, than the contract required. The aggregate difference in the ships required by the contract and those actually built by the trustees was 3,900 tons. No expense or labor was spared to meet the expectations of the government, and to contribute to the interests of the service. Besides the regular performance of the semi-monthly mail service, they have performed, for a considerable portion of the time, a weekly service between New York and Aspinwall ; and for at least four of the seven years, besides the stipulated semi-monthly service between New York, New Orleans, Havana and Aspinwall, have run a direct mail line between New York and Aspinwall twice each month, and, for a considerable period, four times each month. For two years of the time they have also run a direct line, twice each month, between New Orleans and Aspinwall.

The service under the contract required five steamships of an aggregate of 6,600 tons. The aggregate of the five ships built under the contract was 10,500 tons. The increased and extra service required four additional ships ; and there has been actually employed a steam force of 18,000 tons, or 11,400 tons beyond the requirement of the contract.

For this extra and enlarged mail service, performed with an express understanding with the government, that while the trustees and company did not hold the Post Office Department directly liable for it, yet it was at the same time understood that they would go to Congress, under a just claim for additional compensation.

Having surmounted all the obstacles which they were called to encounter in the outset of the enterprise, having built much larger and better ships than they agreed to build, and having performed a far greater amount of mail service than the contract required, but which the wants of the Post Office Department and the public interests called for, and having suffered losses to a large amount by the performance of the extra mail service between New Orleans and Aspinwall over and above any advantages derived from the direct service between New York and Aspinwall, they feel that they not only ought to be permitted to enjoy, in the amplest manner, all the immunities and conditions of their contract, and to receive from Congress, during the period it has to run, undoubted protection in the enjoyment and exercise of their contract rights, but such additional compensation for the extra mail service performed by them as shall be deemed just and equitable.

They therefore pray your honorable body that the proper accounting officers of the government be directed to allow and pay to said trustees such sum as shall be ascertained to be due them therefor, estimating such extra service at a proportion not exceeding one-half the ratio per mile now paid to said trustees under the contract above mentioned.

MARSHALL O. ROBERTS,
HORACE F. CLARK,
ELWOOD FISHER,

Trustees, &c.

NEW YORK, *January 16, 1857.*

POST OFFICE DEPARTMENT,
Washington, February 12, 1857.

SIR: I return herewith the memorial of Marshall O. Roberts, Horace F. Clark, and Elwood Fisher, trustees under the contract with A. G. Sloo, for the transportation of the mail between New York, Havana, New Orleans and Aspinwall, praying additional compensation for extra service performed on that route, which was referred to me by your committee on the 28th ult., with a request to be informed "if the allegations made in the memorial are sustained by the facts; if the extra service claimed by the memorialists was performed with the sanction of the department, and any other facts which may be deemed of importance in the case."

In order that the committee may fully understand the merits of this application, I have deemed it necessary to furnish herewith copies of all the correspondence which has taken place upon the subject. On a careful examination of this correspondence, I think you cannot fail to see that neither the department nor the government has been justly subjected to any claim for additional compensation on account of the extra mails which have been transported by the contractors; such additional mails having in all cases been conveyed with a distinct

understanding that no additional expense should thereby be incurred by the department.

The contract with A. G. Sloo, which was executed on the 20th of April, 1847, and assigned to George Law & Co. on the 3d of September following, requires the transportation of the mails in steamships "from New York to New Orleans twice a month, and back, touching at Charleston, (if practicable,) Savannah, and Havana, and from Havana to Chagres and back, twice a month."

The first change ordered in this service was that assented to on the 26th of April, 1851, when permission was given to the contractors to run their steamers *direct* between New York and Havana, without touching at Charleston and Savannah, by which they were relieved from the necessity of stopping at those intermediate ports, without any change of mail compensation, and without requiring from them any compensatory benefit in increased service on other portions of their route. This permission was provisional in its terms, but has never been revoked. It was granted with a view to afford greater despatch to the through mails between New York and California, and has served a good public purpose in expediting those mails. It has also at the same time relieved the contractors from no inconsiderable portion of the service stipulated for in their contract.

In the spring of 1851 the contractors commenced running a line of semi-monthly steamers between New York and Chagres *direct*, in order to accommodate the rapidly increasing emigration and trade with California. These steamers were placed upon the route without the previous knowledge of the department, and without any reference to the mail service. They were despatched from New York two days after the departure of the regular mail steamers *via* Havana. The necessary effect of this arrangement was to divert correspondence from the mails into the hands of private expresses by the irregular steamers, as thereby correspondents gained the advantage of two days' later dates from New York on outgoing mails, and also two days' earlier intelligence from California on incoming mails. Such a state of things tended greatly to impair the efficiency of the regular mail service, and, as might be expected, numerous complaints were made to the department.

The attention of the contractors was first called to these complaints by Postmaster General Hall, on the 23d of June, 1851, on which occasion he enclosed a copy of a letter from a merchant of New York city, complaining that the California mails were not forwarded to that city by the first steamer from Chagres. I invite your attention to Mr. Law's letter in reply, of June 25, 1851, which was the first received from the contractors on the subject, wherein he stated, "If the department desires the Chagres and California mails, outward or homeward, to be sent by the direct steamers, I shall be happy to direct the commanders of the ships to receive them on board." In the concluding paragraph of this letter Mr. Law stated that in the case complained of "no possible fault can attach to this company or to any of its agents," as the captain of the *direct* steamer on the occasion in question, "knowing the anxiety of the public to get the mails at the earliest possible day, requested that they might be sent by him; but

the mail agent, having no instructions upon the subject, did not feel authorized to allow them to go on board." He also mentions the circumstance that "the previous direct ship of this (his) company brought the Chagres mail for New York by permission of the mail agent and in compliance with our wishes," and closes by intimating that it is only required that the department should issue instructions to the mail agents and the postmaster of New York "in order to insure the transmission of the New York mails, outward or homeward, by the direct steamers of the mail line." I have thus specially referred to this letter for the purpose of showing that at that time no allusion whatever was made in regard to any claim for extra compensation.

On the 1st of July following, the Postmaster General, with the view of having a full and explicit understanding with the company, addressed a letter to Mr. Law, inquiring if the department was correct in its understanding, that the proposed division of the mails between the direct steamers and those running via Havana was "to make no difference in respect to the expense of the service." Mr. Law replied to this letter on the 21st of July, 1851, proposing a rearrangement of the schedules so as to run twice each month between New York and Chagres *direct*; twice a month between New York and New Orleans via Havana, and twice between New Orleans and Chagres *direct*. the arrangement to be conditional, subject to discontinuance if it should prove to be unsatisfactory to the company. He also stated that it was not his intention to preclude the company from making "a claim for reasonable additional compensation for such service," and intimated that such claim (if any) would be made solely on account of the "*additional clerks or agents*" which it would be necessary to employ in carrying the mails outward and homeward by the extra steamers. As these steamers were already running on the route between the points named, having been placed there by the company with a view to their own interests in transporting passengers and freight, the mere circumstance of carrying the mail could not of course enhance the expenses of the company, except it might be in the item of clerk-hire: and it is not perceived that even in that item there was any necessity of an increased expenditure.

It further appears by the letter of the Postmaster General to M. O. Roberts, esq., of April 9, 1852, and Mr. Roberts' reply of the 10th of same month, that no mails had been taken by the *direct* steamers since the month of November preceding, although the company continued their advertisement to take mails by those steamers; thereby misleading the public, and causing frequent complaints on account of the delays to which correspondence intended to be forwarded by those steamers was subjected. I beg to refer you to the correspondence which followed between that date and the 31st of May following, when an order was made by Postmaster General Hall, with the concurrence of the Secretary of the Navy, assenting to the great mail going from New York *direct* on the 5th and 20th of each month, and on the 7th and 22d from New Orleans, on condition that the semi-monthly service between New York and New Orleans, via Havana, should still be continued, and with the distinct understanding that no increased expense

was thereby to be incurred, "either by a direct allowance from the treasury, or by favoring any application which may be hereafter made elsewhere for increased compensation." Subsequently to the making of this order, several letters passed between the Post Office and Navy Departments and the company, in which the departments maintained their position, that they would not hold themselves liable, either directly or indirectly, for any increased expense in the matter. The following letters compose the more important parts of this correspondence, viz: From William H. Aspinwall, president, of 17th May, 1852; the reply of Postmaster General, of 18th May, 1852; joint letter from William H. Aspinwall and George Law, of 25th May, 1852; letter to William H. Aspinwall, of 31st May, 1852; to George Law, of 1st June, 1852; from Secretary of Navy, of 2d June, 1852; to George Law, of 3d June, 1852; from George Law, of 8th June, 1852; to George Law, of 10th June, 1852; to William H. Aspinwall, 10th June, 1852; to Secretary of Navy, of 14th June, 1852; from George Law, of 15th June, 1852; from George Law, of 16th June, 1852; to postmaster of New York, of 16th June, 1852; to George Law, of 18th June, 1852; to Secretary of Navy, of 18th June, 1852; to William H. Aspinwall, of 18th June, 1852; from George Law, of 21st June, 1852; to postmaster of New York, of 22d June, 1852; and from Horatio King, of 24th June, 1852.

In March, 1853, shortly after I came into office, my attention was directed by the postmaster of New York to the fact, that the United States and Pacific Mail Steamship companies had advertised in the New York papers to put on an additional semi-monthly line of steamers between New York and San Francisco, via Aspinwall and Panama, carrying the United States mail and an order was thereupon made on the 25th of March, 1853, with the concurrence of the Secretary of the Navy, instructing the postmasters of New York and San Francisco to make up and forward mails by said steamers, "with the express understanding, however, that the government is to be in no wise holden, either directly or indirectly, for any increased expense in the matter." The postmasters of New York, Boston, and San Francisco, and the president of each of the mail steamship companies, were severally informed by letter of that date, of the terms upon which the mails would be permitted to be forwarded by these intermediate through steamers. The letter in reply, from the vice president of the Pacific Mail Steamship Company, of 28th March, 1853, indicating a purpose to apply to Congress for an extra allowance, I took occasion, on the 1st of April following, to inform that company of the position which this department occupied with reference to that subject, as follows:

"1st. I do not ask or require you to carry any mail by the intermediate semi-monthly steamers which you propose to run on your line; but as you have, it appears, thought it for your interest, independently of the mails, to put on these additional steamers, I have considered it my duty to offer you the mail on the conditions mentioned in my letter to Mr. Aspinwall of the 25th ultimo."

"2d. In thus offering you the mail, it must be distinctly understood that this department neither consents to incur any increased expense in the matter, nor agrees, either directly or impliedly, in

recognizing in any manner any claim for extra compensation for any service your company may perform under the order of the 25th, modified by the further order of the 29th ultimo."

I beg also to refer to my letter to M. O. Roberts, esq., president of the United States Mail Steamship Company, of April 29, 1853, in which, with a view of preventing any misunderstanding with his company, I took occasion to repeat the position of this department, as communicated to the Pacific company by letter of 1st of same month, and to inform him that the Pacific company had agreed unconditionally to those terms.

The mails taken by the intermediate steamers from New York, on the 13th and 28th of April and 28th of March, 1853, were delivered to the contractors with the express understanding (as will fully appear by the accompanying correspondence) that no claim was to be made for extra compensation. On the 9th of May, 1853, the postmaster of New York, having inquired relative to despatching a mail by the intermediate steamer of the 15th of that month, was informed in reply, "that the contractors had been given to understand distinctly on what terms the mail for the intermediate steamers will be offered to them for conveyance; and if they take it, it will be of course only on these terms."

Having thus reviewed the principal portions of the correspondence bearing directly upon the application of the memorialist, I desire briefly to advert to one or two statements made in the memorial to sustain their claim for additional compensation. In the first place, with reference to the extra service which has been performed over and above the regular semi-monthly trips provided for in the contract, I would remark, that such trips have in no case been run by the contractors at the solicitation of the department, or with the purpose primarily, of affording increased mail facilities, the transportation of the mails on such trips being incidental only to the main object which the contractors intended to subserve by running them, which was to provide increased facilities for the transportation of passengers and freight. In all the changes of schedule which have been adopted, the right has been reserved by the company to discontinue the extra trips whenever they should find the arrangement to work disadvantageously. The direct service between New Orleans and Aspinwall, failing to prove a source of profit to the company, was abandoned in the month of September, 1854, agreeably to notice given in Mr. Roberts' letter of 8th August, 1854; while, on the other hand, the direct line between New York and Aspinwall, having proved a source of profit, is continued to this time. It should also be remarked, with regard to the *direct* service between New Orleans and Aspinwall, that while it was in operation, permission was granted to withdraw the company's steamer running between Havana and Aspinwall. Secondly, with reference to that part of the memorial which sets forth that while the company did not hold the Post Office Department directly liable for the additional service rendered, "yet it was at the same time understood that they would go to Congress upon a just claim for additional compensation," I have to observe, that the official correspondence of my predecessor, Mr. Hall, relative to these additional

mails, will not warrant any such conclusion as that he recognized a just claim on Congress for additional compensation, although he did not require from them an express relinquishment of the right to make an application to Congress. In his annual report of November 29, 1851, Mr. Hall defined the position which the department occupied with regard to that subject, as follows: "The contractors for the mail service from New York and New Orleans via Havana to Chagres, some time since proposed to take mails by their steamers which run direct to Chagres, in addition to the mails taken by their steamers touching at Havana. They desired additional compensation therefor. This department declined to assume for the government either an express or implied obligation to make such compensation, but consented to send mails by such steamers, with the express understanding that no obligation to pay for such service was thereby incurred, but without requiring the contractors expressly to relinquish all claim to compensation, and thus preclude an application to Congress." And with regard to any extra service performed since March 25, 1853, it cannot certainly be alleged that I have in any manner, either directly or by implication, countenanced the making of any such application to Congress; on the contrary, I have uniformly given the company to understand that neither the department nor the government were to be holden, directly or indirectly, for any additional allowance growing out of the transportation of mails by the intermediate or other extra steamers plying on their route.

I am, very respectfully, your obedient servant,

JAMES CAMPBELL.

HON. THOMAS J. RUSK,

*Chairman of Committee on Post Office and Post Roads,
U. S. Senate.*

POST OFFICE DEPARTMENT,
March 26, 1851.

SIR: By a provision in the act making appropriations for the naval service for the year ending 30th June, 1852, "the Secretary of the Navy and the Postmaster General are authorized, by and with the consent of the contracting parties respectively, to re-arrange the running of the United States mail steamships, so as to afford more direct despatch between the ports of the United States and the isthmus of Panama: *provided* that the Postmaster General shall maintain a semi-monthly mail between Charleston, Savannah, and Havana, during the continuance of the Sloo contract," &c.

The object of this is understood by the department to be, to have the running of the mail steamers on the New York and Chagres line so varied as that they shall go direct from New York to Havana and back without touching either at Charleston or Savannah; and that

the schedule of the Charleston, Savannah, and Havana route shall be arranged to make the proper connexions with said line at Havana.

Before taking any definite action in the matter, however, I desire to be advised of your views, and to receive any suggestions you may be pleased to make on the subject.

I am, respectfully, your obedient servant,

N. K. HALL.

The POSTMASTER, *Charleston, S. C.*

[The same was addressed to the postmaster of Savannah, Georgia, also to Colonel J. L. Petigru, Charleston, South Carolina.]

POST OFFICE, CHARLESTON,
March 31, 1851.

SIR: Your letter of 26th, having reference to New York and Chagres line, reached me yesterday; it will be found by my own of 3d. that the subject had already presented itself to my mind. I am clearly of opinion that the steamers between New York and Chagres should proceed *direct* to Havana, without touching either at Charleston or Savannah, making the connexion at *Havana*. I therefore submit the following views with great deference, for your consideration. Three lines of steamers from the United States, leave semi-monthly for Havana, viz: one from New York, one from Charleston, and one from New Orleans; and I can see no objection to so arranging their departure from the United States as to insure their *simultaneous* arrival at Havana. It would seem to me that this is the first point to be established. A steamer leaves *Havana* semi-monthly, and might carry the mails and passengers of the other lines to Chagres.

Great advantage would accrue to this section of our country if the California mails and passengers were carried to Havana *direct* from Charleston and Savannah by the Isabel. This advantage would result from avoiding the necessity and danger of going to sea in a very small steamer, frequently in stormy weather, for the purpose of meeting the California steamer *outside*; to which add the greater danger incident to the transfer of mails and passengers from the smaller to the larger vessel. One-sixth of all mail matter from this point for California has, during the past year, been left behind in consequence of the uncertainty of these two vessels meeting beyond the Charleston bar during the prevalence of a gale of wind; and, even when in sight, it would sometimes be impossible for them to exchange with each other.

The mails from California for this portion of the United States are subjected to a delay of nine or ten days by going to New York or New Orleans, which inconvenience would be avoided by their being brought direct to Charleston from Havana. The correspondence of North and South Carolina, of Georgia, North Alabama, Tennessee, Virginia, and Kentucky, all pass through Charleston and Savannah for California. And great derangement and discontent have been caused by the frequent failures to connect with the steamers from New York; also by the delay of mails going to New York and New Orleans.

This can only be avoided by direct communication with Charleston via Havana.

I would the more particularly ask for your favorable consideration of these opinions, when I advert to the fact that the Charleston steamer "Isabel" is most generally at Havana when the Chagres boat arrives at that port. The consequences, however, are so important, that I would venture to say, whatever changes in the times of departures from New York and Chagres are necessary to this arrangement ought unquestionably to be adopted.

With great respect, your obedient servant,

ALFRED HUGER, *Postmaster.*

Hon. N. K. HALL,
Postmaster General, Washington.

CHARLESTON, *April 2, 1851.*

SIR: On receiving the communication from your department, which you did me the honor of addressing to me on the 26th ultimo, I made it my business to inquire among the commercial community how the proposal of a change in the delivery of the California mails was viewed by them. The result of my inquiries is, that the proposed change meets with universal approbation, and the alteration of the schedules so as to make the necessary connexions between the New York, Charleston, and Savannah mails at Havana, will be considered a great improvement in this place.

With great and sincere respect, I am, Mr. Postmaster General, your obedient servant

J. L. PETIGRU.

Hon. N. K. HALL.

POST OFFICE, SAVANNAH, *April 10, 1851.*

SIR: Your letter of 26th ultimo, addressed to George Schley, esq., postmaster, duly reached here; but as he is now too sick to reply to it, I beg leave to make the following remarks:

If the mail service alone is to be taken into consideration, and if the running of the steamers is to be continued as it now is, the Chagres steamers might, I think, be relieved from touching at this port, as the advantages which this city and the Post Office Department derive from the present arrangement is greatly out of proportion with the expense.

By the present arrangement, the Chagres steamers touch at this port on the 14th and 29th of every month, to receive the mails for Havana and California. On the 15th and 1st of every month the Charleston and Havana steamer touches here, to receive the mail for Key West and Havana. The time intervening between the arrival here of these two steamers is so short, that our merchants prefer sending their letters for Havana by the Charleston and Havana steamer. But if the running of these vessels could be so arranged that they should not both arrive here so near the same time, and, consequently, if our merchants

could have the full benefit of the four mails a month that are now sent from here to Havana, the advantage and accommodation to them and to our citizens generally would be much greater ; but, if such an arrangement cannot be made, then I think that the California steamers might be relieved from touching here, as the mails that are sent from here to California are so small, that they might be sent to Havana by the Charleston and Havana steamer, to go from there without much inconvenience.

There are, however, other considerations which should not be lost sight of in determining this question.

The growing importance of this place, consequent, partly, upon the extension of the railroads in Georgia converging at this point, and the great and rapid increase in the business of the place, render it very desirable to our citizens that the Chagres steamers should continue to touch here, as they assist in drawing trade to the place.

In passing, I will mention that I was told to-day, in conversation with a gentleman on this subject, that he has understood from good authority that the proprietors of the Charleston and Havana steamer intend, when they renew their contract with the department, to get relieved from that part of the service which requires the steamer to touch at Savannah. If they succeed in this, and if the Chagres steamer should also be withdrawn, we will then be without any direct communication with Havana.

I am, very respectfully, your obedient servant,

JOHN G. DOON,
Assistant Postmaster.

N. K. HALL, Esq.,
Postmaster General, Washington.

POST OFFICE DEPARTMENT,
April 15, 1851.

SIR :

I embrace this occasion to hand you, also, letters from the postmaster of Charleston, the assistant postmaster of Savannah, and Col. Petigru, in answer to letters which I addressed to them, requesting their views as to the expediency of the mail steamers on the New York and Chagres line running direct from New York to Havana, without touching at Charleston and Savannah.

I am disposed to recommend, if you have no information which may lead you to think it ought not to be done, that the running of these steamers, in connexion with those on the Charleston and Havana line, be rearranged so as to permit the former to run direct from New York to Havana and back, as above suggested. Please return the letters when you shall have examined their contents.

I am, respectfully, your obedient servant,

N. K. HALL.

Hon. W. A. GRAHAM,
Secretary of the Navy.

NAVY DEPARTMENT,
April 16, 1851.

SIR: I have the honor to acknowledge the receipt of your letter of the 15th instant, with its enclosures.

I will confer with you personally upon the subject of a change in the running of the steamers referred to in your communication.

The letters from Colonel Petigru, and from the postmasters of Charleston and Savannah, are herewith returned, agreeably to your request.

I am, very respectfully, your obedient servant,
WILLIAM A. GRAHAM.

Hon. N. K. HALL,
Postmaster General.

POST OFFICE DEPARTMENT,
April 23, 1851.

SIR: I have the honor to inform you that I have had a conversation with Mr. Law, in reference to his verbal proposition to run his steamers direct from New York to Havana, without touching at Charleston and Savannah, and I am disposed to give my assent to a conditional arrangement to this effect, as indicated by the enclosed letter prepared for the purpose. If you concur, please sign and return said letter, when it will also receive my signature.

I am, respectfully, your obedient servant,
N. K. HALL.

Hon. W. A. GRAHAM,
Secretary of the Navy.

NAVY DEPARTMENT,
April 25, 1851.

SIR: Concurring in the conditional arrangement with Mr. Law, indicated in your letter of the 23d instant, in reference to his verbal proposition to run his steamers direct from New York to Havana, without touching at Charleston and Savannah, I return herewith the letter addressed to him on the subject, to which I have appended my signature.

I am, very respectfully, your obedient servant,
WILLIAM A. GRAHAM

Hon. N. K. HALL,
Postmaster General.

WASHINGTON, *April 26, 1851.*

SIR: Reports from the postmasters of Charleston and Savannah induce us to believe that there will be no objection to the mail steamer of your line running direct from New York to Havana, without stopping at the cities first named, so long as the mail steamers are continued, as at present, between Charleston and Havana.

Wishing to be fully assured that the arrangement you propose will be entirely satisfactory to the people of Charleston and Savannah before any formal contract is entered into under authority conferred by a late act of Congress, and not having leisure at this time to give to this matter the consideration its importance demands, we propose to give you at once, and do now give you, permission to run your steamers direct from New York to Havana, as you propose, until the undersigned, or one of them, or their or his successor in office, shall otherwise direct, or the present mail service between Charleston and Havana shall be discontinued; in either of which events, this permission shall be considered as revoked, and your steamers shall be required to run as heretofore.

It is, however, advised that you do not advertise a change of schedule to leave in advance of the present regularly-fixed days, except for a single trip at a time, until a permanent arrangement shall be consummated.

WILL. A. GRAHAM,
Secretary of the Navy.
N. K. HALL,
Postmaster General.

GEORGE LAW, Esq., *Present.*

NEW YORK, *June 20, 1851.*

DEAR SIR: Have you not the power to compel those who contract to bring the mails from Chagres to forward them by their first steamer? If you only could hear the complaints daily, and more particularly at this time—all of us being very anxious to hear from our friends and know the extent of their losses by the fire—you would excuse me for annoying you; but it is really too bad that we should, in almost every case, have to wait two or three days after the news is received before the mail steamer arrives. If you can effect any remedy, you will confer a great favor on thousands, and at the same time benefit the department.

With great respect, your obedient servant,

EDWARD MINTURN.

The POSTMASTER GENERAL.

POST OFFICE DEPARTMENT,
Washington, June 23, 1851.

SIR: Herewith, by direction of the Postmaster General, I enclose, for your perusal, a copy of a letter from a highly respectable merchant of New York, complaining that the mails between New York and

Chagres, &c., are not forwarded from Chagres by the first steamer. Your answer is requested.

There are complaints, also, that, by the outward trips, the running of the steamers is so arranged as to give those disposed to take advantage of it the opportunity of sending so as, in effect, to be two or three days in advance of the mail on the other side.

I am, very respectfully, your obedient servant,

S. D. JACOBS,
First Assistant Postmaster General.

GEORGE LAW, Esq.,
Pres't U. S. Mail Steamship Company, New York city.

OFFICE OF THE UNITED STATES MAIL STEAMSHIP COMPANY,
New York, June 25, 1851.

SIR: I have just received your despatch of the 23d instant, enclosing a letter from a merchant of this city, complaining that the mails between New York and Chagres are not forwarded from Chagres by the first steamer.

The mails for California via Chagres, and back, are despatched by the mail steamships of this company twice each month, on the days originally arranged with the department. Being required to go and return by way of Havana, and to receive and discharge there the mails from and for New Orleans, Charleston, &c., the passage is usually two days longer than the direct passage to and from Chagres and this port.

In addition to the mail steamers, we despatch also, twice a month, a steamer from this port and Chagres direct. These leave here usually two days later than the mail steamers via Havana, so as to make the arrival at Chagres about the same time. Of course the return steamer with the mail from Chagres is usually two days later arriving here, coming by Havana, than the steamer starting at the same time and coming direct. The mail to and from Chagres will therefore be carried with greater despatch by the direct line, while the mails for New Orleans, Charleston, &c., must necessarily be carried by the Havana route.

If the department desires the Chagres and California mails, outward or homeward, to be sent by the direct steamers, I shall be happy to direct the commanders of the ships to receive them on board.

In the case complained of by the merchant of this city, whose name I am not favored with, no possible fault can attach to this company, or to any of its agents. On that occasion Captain Tanner, of the *Crescent City*, our direct steamer, knowing the public anxiety to get the mails at the earliest possible day, requested that they might be sent by him; but the mail agent, having no instructions upon the subject, did not feel authorized to allow them to go on board. The *Empire City*, the previous direct ship of this company, brought the Chagres mail for *New York*, by permission of the mail agent and in compliance with our wishes; but, in order to insure the transmission

of the New York mails, outward or homeward, by the direct steamers of the mail line, the mail agents on the route and the postmaster here will no doubt require instructions from the department.

I have the honor to be, very respectfully, your obedient servant,
GEORGE LAW.

S. D. JACOBS, Esq.,
First Assistant Postmaster General.

POST OFFICE DEPARTMENT,
Washington, July 1, 1851.

SIR: Your letter of the 25th ultimo is received, and, if understood, is satisfactory.

You say, "if the department desires the Chagres and California mails, outward or homeward, to be sent by the direct steamers, I shall be happy to direct the commanders of the ships to receive them on board."

We understand this to mean that you will take mails both by your steamers via Havana and by those plying between New York and Chagres direct; and, of course, that this division of the mails is to make no difference in respect to the expense of the service. Are we correct in this?

I am, very respectfully, your obedient servant,
N. K. HALL.
Postmaster General.

GEORGE LAW, Esq.,
President U. S. Mail Steamship Company,
New York city.

POST OFFICE, New York, July 7, 1851.

SIR: The regular California mail steamers, as you are aware, sail on the 11th and 26th of each month, via Havana. Steamers belonging to the same company sail on the 13th and 28th for Chagres direct, and arrive there before the United States mail. By the last mentioned vessels the private expresses forward the most of the correspondence they are intrusted with, (which is principally mercantile, being two days later dates than the United States mail,) and their agents go from Panama to San Francisco, &c., in the same steamer with the United States mail agent. The department should issue instructions to me to make up a supplementary mail by the steamers of the 13th and 28th for San Francisco, Oregon, &c., which would be received by the agent at Chagres, and taken up with the regular mail; at the same time the United States mail agents should watch closely and seize all packages having the appearance of containingailable matter. Panama, in my opinion, would be the proper place to make the seizure. One or two seizures would assist very materially in preventing parties from sending their letters by the expresses.

Respectfully, your obedient servant,

WM. V. BRADY, P. M.

Hon. N. K. HALL,
Postmaster General.

POST OFFICE DEPARTMENT,
Washington, July 9, 1851.

SIR: We have had it in view to give the instructions suggested in your letter of the 7th instant, with reference to mails by the steamers which sail for Chagres on the 13th and 28th of each month, and Mr. Law was addressed on the subject under date of the 1st instant. We now await his reply.

I am, very respectfully, your obedient servant,

S. D. JACOBS,
First Assistant Postmaster General.

W. V. BRADY, Esq.,
Postmaster New York city.

[By telegraph.]

POST OFFICE DEPARTMENT,
Washington, July 26, 1851.

POSTMASTER NEW YORK: See if Mr. Law will take mail by his steamer of the 28th, and, if so, make up and send.

N. K. HALL,
Postmaster General.

POST OFFICE, *New York, July 26, 1851.*

SIR: Your telegraphic despatch of this a. m. was duly received. In answer, I have to inform you that the steamer of the 28th will take a mail for California. I shall therefore make up a mail by the "Ohio," as per instructions.

Respectfully, your obedient servant,

WM. V. BRADY, *P. M.*

Hon. N. K. HALL,
Postmaster General, Washington, D. C.

Please advise me if I shall continue making up mails by the steamers of the 13th and 28th, as also those of the 11th and 26th.

W. V. B.

OFFICE OF THE UNITED STATES MAIL STEAMSHIP COMPANY,
New York, July 21, 1851.

SIR: I have the honor to acknowledge the receipt of your letter of the 1st instant.

It is the intention of this company, at an early day, if it shall meet with the approbation of the department, to arrange the running of its steamers, each month, as follows, viz: Twice between New York and

Chagres direct; twice between New York and New Orleans, via Havana; and twice between New Orleans and Chagres direct; making three distinct routes, and six passages per month to and from the respective points of destination. Provision will be made for carrying the mail by each steamer, and to insure the arrival of the California mails at the city of New York and at New Orleans at the earliest day that their arrival at Chagres will enable them to be brought forward. We propose to make trial of this arrangement, and, if it proves satisfactory, to continue it. So long as it is in operation, the direct connexion between Havana and Chagres may be dispensed with, as the Charleston and Savannah mails may be sent via New Orleans.

In expressing, in my letter of the 28th ultimo, the readiness of this company to instruct the commanders of their steamers, direct, as well as by way of Havana, to convey the California mails, if desired by the department, it was not my intention to preclude a claim for reasonable additional compensation for such service. Although we desire to meet fully the requirements of the service and the wishes of the department, it is not expected, I presume, that the mails can be carried, outward and homeward, six times per month, with the necessary additional clerks or agents, for the same sum for which we contract to carry them twice monthly. Still, desirous of promoting to the utmost the interest and convenience of the public, we are entirely willing to perform the additional service, in the confident expectation that a sense of justice will induce Congress to make such further provision as may be considered a suitable compensation for it.

I have the honor to be, with great respect, your obedient servant,
GEORGE LAW,
President, &c.

Hon. N. K. HALL,
Postmaster General.

Mem.—This letter was not received at the department until July 29, 1851.

POST OFFICE DEPARTMENT,
Washington, August 4, 1851.

SIR: The Postmaster General requests that you will be pleased to state the schedules by which you propose to run, in the event of rearranging your service, on the New York, Havana, New Orleans and Chagres line, as contemplated. The days of departure and arrival at each point should be given.

In your proposition, is it your intention that the Charleston and Savannah mails shall still go via Havana, or overland to New Orleans?

I am, very respectfully, your obedient servant,

S. D. JACOBS,
First Assistant Postmaster General.

GEORGE LAW, Esq.,
President United States Mail Steamship Company, New York.

POST OFFICE, *New York, August 7, 1851.*

SIR: The "Empire City" sails with the California mails at 3 p. m., on the 11th instant—schedule time.

The "Georgia" succeeds her on the 13th, for Chagres direct, carrying two days' later dates.

Shall I make up a supplementary mail for the "Georgia?" Permit me to refer you to the postscript of my letter of the 26th ultimo, relative to this subject.

Respectfully, your obedient servant,

W. V. BRADY, *Postmaster.*

Hon. N. K. HALL,

Postmaster General, Washington, D. C.

POST OFFICE DEPARTMENT,
Washington, August 8, 1851.

SIR: In answer to your letter of the 7th instant, I have to say that you will make up and forward mails by Mr. Law's direct steamers to Chagres—with this understanding, however, that this department does not thereby become responsible for any additional expense.

I am, very respectfully, your obedient servant,

N. K. HALL,
Postmaster General.

W. V. BRADY, Esq.,

Postmaster, New York city.

POST OFFICE, NEW YORK,
August 9, 1851.

SIR: I herewith hand you a letter received from Mr. Roberts, in answer to yours of the 8th instant to me, relative to supplementary California mails per steamers of 13th and 28th. Be kind enough to answer by telegraph, provided you wish a mail sent by the Georgia, in order that I may post my bulletins immediately after the closing of the mails on the 11th.

Respectfully, your obedient servant,

W. V. BRADY,
Postmaster.

Hon. N. K. HALL,

Postmaster General, Washington, D. C.

OFFICE OF THE UNITED STATES MAIL STEAMSHIP CO.,
New York, August 9, 1851.

SIR: The mails for Chagres, both direct and via Havana, will be carried by the steamships of this company, upon the terms and in the manner heretofore stated to the Post Office Department, viz:

Compensation for any extra or additional mail service to be submitted to Congress, without requiring a prior stipulation to pay from the department.

Respectfully, your obedient servant,

M. O. ROBERTS.

W. V. BRADY, Esq.,
Postmaster, New York.

OFFICE OF THE UNITED STATES MAIL STEAMSHIP Co.,
New York, August 28, 1851.

SIR: I have delayed a reply to your letter of the 4th instant, in the expectation of being able to state in detail the proposed rearrangement of the service between New York Havana, New Orleans, and Chagres. But, as it will be necessary to place or continue in dock two or three of the ships for repairs, &c. before the arrangement can be carried out, I have thought it best to run the several routes under the present arrangement, viz: between New York and Chagres, direct, twice a month; and between New York and New Orleans, via Havana and Chagres, twice a month; being four voyages, outward and homeward, per month. We shall add, at an early day, a direct line between New Orleans and Chagres monthly or semi-monthly, as the public wants or the wishes of the department shall require. The department will be advised as soon as this route is ready to go into operation; and we shall be happy, meanwhile, to be governed by the wishes or directions of the department.

The departure of the California mail from Chagres for New York, and its consequent arrival here, could be much expedited by greater promptness in the conveyance of the mail across the Isthmus of Panama. It is understood that, under the present arrangement with the government of New Granada, the American consul informs the President of the arrival of the mail at Panama, and, upon being so informed officially, that functionary directs the contractors or agents of the New Granadian government to attend to its transportation across the Isthmus. Time might be gained, or delays avoided, if the government of New Granada would appoint an agent at Panama, (for convenience and despatch in the office of the Pacific Mail Steamship Company,) who would at once see to the weighing of the mails, and despatch them, with the aid, of course, of the agents of the Post Office Department of the United States, without the unavoidable delay incident to the existing mode.

No alteration is contemplated by this company in the present mode of despatching the mails from Charleston and Savannah for Havana, Chagres, and New Orleans.

I am, very respectfully, your obedient servant,

GEORGE LAW.

Hon. S. D. JACOBS,
First Assistant Postmaster General.

POST OFFICE DEPARTMENT, *April 9, 1852.*

SIR: It is perceived you still advertise to leave New York for Chagres, &c., on the 11th and 26th of each month, but it does not appear that any mails have recently been taken by you on either of those days. Frequent complaints are made to the department that letters written to go on one or other of those days lie ever in New York, and it is highly important that measures be taken at once to put an end to this state of things. If we are actually to have no mails out, except by the steamers of the 9th and 24th, we wish to make this fact generally known, with a caution to the public not to write for the 11th and 26th, as they are now led to do by your advertisement.

I am, respectfully, your obedient servant,

N. K. HALL.

M. O. ROBERTS, esq.,

Agent U. S. Mail Steamship Co., New York, N. Y.

OFFICE U. S. MAIL STEAMSHIP COMPANY,

New York April 10, 1852.

SIR: I have duly received your letter of the 9th instant, and, in reply, beg to inform the department that the departure of the steamers of this line on the 11th and 26th of each month was suspended in consequence of an accident which befel the Illinois, in November last. That steamer is now advertised for the 26th instant, and will sail on that day.

Mr. Law, the president of the company, is now confined to his house by indisposition. When he is able to resume active business, I hope to be able to make permanent sailing arrangements that will be satisfactory to the department.

I am, sir, very respectfully, your obedient servant,

M. O. ROBERTS,

Agent U. S. Mail Steamship Co.

Hon. N. K. HALL,

Postmaster General, Washington, D. C.

POST OFFICE, NEW YORK, *April 14, 1852.*

SIR: The enclosed advertisement is the first that has appeared in three months, in relation to the steamers for Chagres direct.

Am I to consider the instructions to make up mails for the steamers of the 11th and 26th still in force?

Respectfully, your obedient servant,

WILLIAM V. BRADY,

Postmaster.

Hon. N. K. HALL,

Postmaster General, Washington, D. C.

Suggestion of new schedule, made by M. O. Roberts to the Postmaster General, April 14, 1852.

DIRECT.—To sail from New York on the 5th and 20th, and return direct to New York.

VIA HAVANA.—To sail from New York (as at present) on the 9th and 24th, except when those dates happen to be Sunday, and then to sail on the day following or preceding, as may be agreed.

POST OFFICE DEPARTMENT, *April 15, 1852.*

SIR: In answer to your letter of the 14th instant, I have to say, that if the contractors resume their running on the 11th and 26th of the month for Chagres and San Francisco, you will make up and send mails by the direct steamers on said days, as heretofore under the original order.

We have a memorandum from the company, handed in yesterday by Mr. Croswell, proposing the 5th, 9th, 20th and 24th of each month as the future days of sailing from New York; these ships to connect with the *way* and *direct* steamers on the other side, regularly for San Francisco. Will this be a good arrangement?

I am, very respectfully, your obedient servant,

N. K. HALL.

WM. V. BRADY, Esq.,
Postmaster, New York, N. Y.

POST OFFICE, NEW YORK,
April 17, 1852.

SIR: Yours of the 15th came duly to hand. In answer, I have to report, that in an interview with Mr. Roberts, this day, he informs me that the trip of the "Illinois" for the 26th instant will be made (connecting with the "Golden Gate" on the Pacific side) for the purpose of seeing in how short a time they can run through. Unless otherwise instructed, I shall, therefore, make up and despatch a mail for the "Illinois." Mr. Roberts also informs me that the steamers of the 5th and 20th will be direct steamers, forming a connexion with the steamers on the other side, and he anticipates running through in eighteen days. Those of the 9th and 24th will be via Havana, this side, and touch at San Diego, Monterey, &c., on the Pacific; thus making four mails per month—in my opinion, a very excellent arrangement.

Very respectfully, your obedient servant,

WM. V. BRADY, *Postmaster.*

Hon. N. K. HALL,
Postmaster General, Washington, D. C.

POST OFFICE, NEW YORK,
April 28, 1852.

SIR: Permit me to refer you to my letter of the 17th instant, an extract from which I hereto annex:

"Mr. Roberts also informs me that the steamers of the 5th and 20th will be direct steamers, forming a connexion with the steamers on the other side, and he anticipates running through in eighteen days, and thus making four mails per month—in my opinion, a very excellent arrangement."

At our interview, Mr. Roberts informed me he was ready to commence service at any time after May 1st.

Have the kindness to give this your immediate attention, and, if you agree with me, please send the necessary department instructions.

Respectfully, your obedient servant,

WM. V. BRADY, *Postmaster.*

Hon. N. K. HALL,

Postmaster General, Washington, D. C.

POST OFFICE DEPARTMENT,
April 29, 1852.

SIR: In answer to your letter of the 28th instant, I have to say that the department waits only for the formal proposition of the contractors as regards the schedule of departures from New York to Chagres, before acting in the matter. The department is ready to adopt the schedule suggested.

I am, respectfully, your obedient servant,

N. K. HALL.

WM. V. BRADY, Esq.,

Postmaster, New York, N. Y.

OFFICE OF THE UNITED STATES MAIL STEAMSHIP COMPANY,
New York, April 30, 1852.

SIR: Referring to your letter of the 9th instant, and to my reply of the following day, I have now the honor to inform you that the steamers of this line will, for the present, leave New York for Aspinwall, Navy bay, on the following days, viz:

For Aspinwall direct, or via Jamaica, on the 5th and 20th of each month, to return direct to New York.

The direct line to Aspinwall will touch at Kingston, Jamaica, for coals, either on the outward or homeward passage, until the depot now in progress of construction by the company at Aspinwall shall

be completed, which will be in about a month, when our supply of coals will be obtained there, and the necessity of touching at Kingston obviated. As soon as these arrangements are completed, the department will be advised.

The line between New York and New Orleans, touching at Havana, will leave here on the 9th and 24th of each month, and returning leave New Orleans on the 10th and 25th. A steamer connecting with this line will run between Havana and Aspinwall, and will connect also at Havana with the Isabel to and from Charleston.

In both cases, the departure from Aspinwall, homeward, will be made as soon as possible after the receipt of the Pacific mails.

The steamer of the 26th, from New York, will, for the present, be discontinued, and the advertisements naming that date will be altered.

With regard to increased mail facilities between New York and San Francisco, about which some conversation has been had with the department, it is Mr. Law's intention to visit Washington at an early day, for the purpose of conferring with you on the subject. Mr. Law having been detained here in consequence of ill health, has been prevented from giving the subject as early attention as he had intended.

* * * * *

I am, sir, very respectfully, your obedient servant,

M. O. ROBERTS.

Hon. N. K. HALL,

Postmaster General, Washington.

POST OFFICE, NEW YORK,
May 3, 1852.

SIR: Yours of the 29th April came duly to hand, in relation to the new schedule for California steamers.

I directed Mr. Jenkins to enclose it to Mr. Roberts, and say to him it was desirable that the arrangement should be consummated as soon as practicable. I herewith hand you his reply.*

If the proposition submitted by Mr. Roberts to you on the 30th April meets your approbation, will you be kind enough to instruct me by telegraph on the 4th instant, and as early as possible, whether I shall make up a mail per "Crescent City" on the 5th instant?

Respectfully, your obedient servant,

WM V. BRADY,
Postmaster.

Hon. N. K. HALL,

Postmaster General, Washington, D. C.

* Returned as requested in writing thereon.—H. K.

POST OFFICE DEPARTMENT,
May 4, 1852.

SIR: Your letter of yesterday, (enclosing the note from Mr. Roberts of same date, herewith returned,) and Mr. Roberts' letter of 30th ultimo to me, in regard to the proposed schedule for the New York and California mails, both came to hand this morning.

Mr. Roberts proposes to take mails by the direct steamers from New York on the 5th and 20th, and by the Havana and New Orleans line on the 9th and 24th of each month. You will therefore be pleased to make up and send mails accordingly, commencing to-morrow, as requested in my telegraphic despatch to you of this morning.

I am, respectfully, your obedient servant,

N. K. HALL.

WILLIAM V. BRADY, Esq.,
Postmaster, New York.

WASHINGTON, D. C.,
May 17, 1852.

SIR: The change in the days of departure of the direct steamships from New York to Aspinwall, proposed in your letter of the 4th instant, from the 11th and 26th to the 5th and 20th of each month, should doubtless be made. The expedition between San Francisco and Panama has, at great expense to the Pacific Mail Steamship Company, been increased about 33½ per cent., and it is necessary that the New York ships should be at Aspinwall six days earlier than heretofore, so as to take off the mails immediately on their arrival from the Pacific to that place, and enable the speed gained on the Pacific to be realized in a correspondingly earlier receipt of them at New York. It is necessary also to insure a like despatch of the mails to San Francisco, without detaining the ships at Panama. But there is a condition annexed to the proposed change, viz: that the mails which shall be sent by the Havana line, and which leave New York on the 9th and 24th, shall also be taken directly up the Pacific on their arrival at Panama. This I can satisfactorily show would be injurious to the contractors and the mail service.

It will require the running of another separate and distinct line, which you propose to have done without any additional compensation. It is true a second line is now run voluntarily, but it is auxiliary only to the first one. It supplies the intermediate offices, and relieves the ships of the first line from all detention at way ports, aiding them thereby to perform the greater expedition; and it is run in such connexion with the first line, that whenever the travel falls off it may be suspended for the trip or discontinued. But to carry out the condition coupled with the proposed change, the line established for that purpose would have to run, whether there should be any travel to support it or not. This would be a most hazardous

arrangement for the proprietors to undertake under a proposition to receive nothing for mail pay, when the cost of the round trip will average about \$60,000.

By this arrangement the Havana line would have to take all the *through* mails for San Francisco and beyond, which are collected at and despatched from Charleston, Savannah, and New Orleans; and these *through* mails would have to go up the Pacific in this second slow line; at present they are transferred to the fast line on the Isthmus, where they arrive at the same time that the mails by the direct boats do, by reason of starting sooner from the Atlantic ports. They are now some three or four days longer in their transit; but the arrangement proposed would add to that some six days more, at least, in consequence of the slower running of the second line up the Pacific. This would not fail to produce loud complaint.

Still, the expedition that the change to the 5th and 20th will secure, is, I know, necessary to satisfy the public, and to carry out the objects contemplated by a certain provision in the act of 1851. But when the direct ships leave New York on the 5th and 20th, those via Havana should leave on the 1st and 16th, *unless a different and far better plan be adopted*, one which will send the Charleston and Savannah mails to San Francisco in the same number of days as those of New York, and will take those from New Orleans in four days less time; making, in the latter case, a gain of seven or eight days in expedition over the other arrangement—a great improvement, certainly, and one that will be highly appreciated, considering the importance of the New Orleans mails to the Pacific, and that fourteen States, besides the Territories, are directly interested in them. That plan is, to allow the United States Mail Steamship Company to run to Aspinwall direct from New Orleans, instead of from Havana, and send the Charleston and Savannah mails overland to New Orleans, to be conveyed thence with the New Orleans mails to the Isthmus. There can be no doubt of the competency of the executive authority so to arrange it now, since the passage of the act of 1851. If this change were ordered, the departures from New Orleans might be fixed for the 9th and 24th of each month. At first, to avoid risk of disconnexion, it would doubtless be best to name the 7th and 22d in the schedules.

I might add, that the weight of the bags could be taken and reported by the mailing postmasters, and thus save all delay on that score at Panama; for, from assurances given me by the present minister to this country from New Granada, I have no doubt that his government would be entirely willing, on proper representations being made, to take such weighing and dispense with any on their part.

This, in conjunction with the mail bills in which the postmasters enter the number of all bags sent and received, would the better enable you to dispense with the mail agents on the line, whose services on board the ships are performed through the agency of the officers and hands of the ship, and could, under the responsibilities which the department demands of the contractors, be as well performed without the superintendence of the agent as with it.

This reform would result in a saving to the department of more, I suppose, than \$10,000 per annum, which could be applied at once to a great and most anxiously desired improvement in the California mail service, by employing a way-line of mail steamers to supply, not only Monterey and San Diego, but San Luis Obispo, Santa Barbara, and San Pedro, from which Los Angeles and every other point in southern California could be promptly and frequently supplied, instead of being left almost entirely destitute of service under their present half-monthly and most dilatory land mails. This would enable the main line to San Francisco, at all times, to save from one to two days, by not stopping to deliver mails at San Diego and Monterey.

Submitting these views to the better judgment of the Postmaster General, and craving a favorable consideration of them, I have the honor to be, most respectfully, your obedient servant,

WM. H. ASPINWALL, *President.*

Hon. N. K. HALL, *Postmaster General.*

POST OFFICE DEPARTMENT,

May 18, 1852.

SIR: Your letter of yesterday, in answer to mine of the 4th instant, and suggesting certain changes in the service between New York, &c., and San Francisco, is received.

By reference to my letter, you will observe that the proposition to change the days of departure of the direct steamers between New York and Aspinwall, from the 11th and 26th, to the 5th and 20th of each month, comes from the United States Mail Steamship Company, and not, as it would appear by your letter, from the department. I supposed it was by a mutual understanding between the two companies that this change in the running of the *direct* steamers was proposed, and that the principal object was to advance the interest of the respective companies, by offering improved facilities to passengers, as wells as to the through mails. I was given to understand, both by Mr. Crosswell in conversation, and the postmaster of New York, by letter, that in proposing this change it was the intention to have four mails a month to San Francisco; two from New York on the 5th and 20th, via Kingston; and two via Havana, on the 9th and 24th. In his letter of the 17th of April, the postmaster of New York says: "Mr. Roberts also informs me that the steamers of the 5th and 20th will be direct steamers, forming a connexion with the steamers on the other side, and he anticipates running through in eighteen days. Those of the 9th and 24th will be via Havana, this side, and touch at San Diego, Monterey, &c., on the Pacific; thus making four mails per month—in my opinion, a very excellent arrangement."

Under these circumstances, I gave my assent to the change, with the understanding, of course, hitherto existing, that there was to be no additional expense for these additional trips.

Your suggestions relative to further changes in the service this side

of the isthmus will be carefully considered. I take it for granted, however, that on this point the United States Mail Steamship Company will also address the department before any action in regard to it is taken here.

I have called on the Hon. Mr. Gwin for his views as to the expediency of your being permitted to omit San Diego and Monterey from your main line, in accordance also with your suggestion, on condition of your supplying those offices and others named by you as being on the route, by a regular coasting line of steamers from San Francisco, without change of pay. Of course, I should not feel myself justified in making this change except on some such condition.

I am, very respectfully, your obedient servant,

N. K. HALL.

WM. H. ASPINWALL, Esq.,

President Pacific Mail Steamship Co., New York, N. Y.

PACIFIC MAIL STEAMSHIP COMPANY,
New York, May 25, 1853.

SIR: I have had the honor to receive your letter of the 18th instant. I must ask your indulgence for forgetting, when writing my letter of the 17th, that the proposition referred to emanated from the United States Mail Steamship Company.

I have seen Mr. Law, the president of that company, and he is willing that the mail-boats shall run direct between New York and Aspinwall, and New Orleans and Aspinwall; understanding that with the increased service you may confirm in sanctioning this arrangement, you authorize no corresponding change in our or his compensation, as more specially detailed in the letter of Mr. M. O. Roberts to you of July 21, 1851; and also with the understanding, that if this plan be found to work disadvantageously, he will return to the schedule according to which his boats now run.

I presume you intend that the money now used for the support of the mail agents be devoted toward the support of the coasting line of steamers from San Francisco to Monterey, San Diego, and other California ports; that, in other words, the mail establishment between this and California shall offer enhanced facilities without drawing more money from the treasury under existing laws.

I will present this letter to Mr. Law, president of the United States Mail Steamship Company, for his approval, in accordance with your suggestion that you would like to hear from him on the subject before deciding.

I have only to ask the prompt approval of the department for an arrangement promising greater despatch and convenience in every way, and remain, with high respect, your obedient servant,

WM. H. ASPINWALL, *President.*

Hon. N. K. HALL,

Postmaster General.

I concur in the above.

G. LAW, *President.*

POST OFFICE DEPARTMENT, *May 31, 1852.*

SIR: Your letter of the 25th instant, accompanied by Mr. Law's written concurrence in respect to the propositions therein contained, has been received.

In reply, I have to inform you that, agreeably to the propositions above referred to, I have made an order (contingent upon the concurrence of the Secretary of the Navy) for the great through mails between New York and San Francisco to be sent from New York on the 5th and 20th of each month, direct to Aspinwall, instead of on the 9th and 24th, via Havana, and from New Orleans on the 7th and 22d of each month, also direct to Aspinwall, instead of via Havana, on condition that the present semi-monthly service between New York and New Orleans, via Havana, and back, shall still be continued, and with the distinct understanding that, in thus giving my assent to this arrangement, I in no way consent to any increased expense in the matter, either by a direct allowance from the treasury, or by favoring any application which may be hereafter made elsewhere for increased compensation. It must, of course, be understood, also, that, as this order authorizes the discontinuance of the service between Havana and Aspinwall, and requires the Charleston and Savannah mails to be sent overland to and from New Orleans, the existing arrangement is to be restored in case the plan now adopted shall be found to work disadvantageously.

The Pacific mail line will be run in due connexion with the mail lines this side the isthmus.

In regard to the proposed coasting line for the way offices on the Pacific, I have to repeat that I should feel authorized to give my assent to your omitting San Diego and Monterey from the mail line only on condition of your supplying those offices regularly by a coasting line, wholly at your own expense.

I am, very respectfully, your obedient servant,

N. K. HALL.

W. H. ASPINWALL, Esq.,

Pres. Pacific Mail Steamship Co., New York, N. Y.

P. S. The change between New York and Aspinwall, and between New Orleans and Aspinwall, may take effect on the 20th of June.

N. K. H.

POST OFFICE DEPARTMENT, *June 1, 1852.*

SIR: Herewith I have the honor to enclose the copy of a letter, yesterday addressed to William H. Aspinwall, esq., president of the Pacific Mail Steamship Company, (a copy of which has also been sent to Mr. Law, of the United States Mail Steamship Company,) by which you will observe that I have given my assent, conditionally, to certain alterations on the New York, New Orleans, and San Francisco mail lines. If you concur, please so advise the respective parties interested.

I am, very respectfully, your obedient servant,

N. K. HALL,

Hon. W. A. GRAHAM,

Secretary of the Navy.

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POST OFFICE DEPARTMENT, *June 1, 1852.*

SIR: Enclosed please find the copy of a letter addressed to Mr. Aspinwall, yesterday, in answer to his communication of the 25th ult., concurred in by you.

I am, very respectfully, your obedient servant,

N. K. HALL.

GEORGE LAW, Esq.

*President United States Mail Steamship Company,
New York, N. Y.*

NAVY DEPARTMENT, *June 2, 1852.*

SIR: I have the honor to acknowledge the receipt of your letter of yesterday's date, with enclosure, asking the concurrence of this department in certain alterations on the New York, New Orleans, and San Francisco mail lines, and to inform you of my concurrence in the changes of times of departure, and the points of arrival of the mail steamers for the through mails between New York and San Francisco, believing that those matters belong properly to the Post Office Department, but it is with the distinct understanding that no allowance from the treasury, on any application which may hereafter be made elsewhere for increased compensation, will receive the sanction of this department.

I am, sir, with high respect, your obedient servant,

WILLIAM A. GRAHAM,

Hon. N. K. HALL,

Postmaster General.

POST OFFICE DEPARTMENT,
June 3, 1852.

SIR: Enclosed please find a copy of the letter from the Secretary of the Navy in answer to my note of the 1st inst., transmitting to him a copy of my letter to you of the 31st ult., in regard to the proposed change of arrangement on the New York and California lines

I am, very respectfully, your obedient servant,

N. K. HALL.

WM. H. ASPINWALL, Esq.,

President Pacific Mail Steamship Company, New York.

POST OFFICE DEPARTMENT,
June 3, 1852.

SIR: Enclosed please find a copy of the letter from the Secretary of the Navy in answer to my note of the 1st inst., transmitting to him a copy of my letter to Mr. Aspinwall, of the 31st ult., in regard to the proposed change of arrangements on the New York and California lines.

I am, very respectfully, your obedient servant,

N. K. HALL.

GEORGE LAW, Esq.,

President U. S. Mail Steamship Company, New York.

PACIFIC MAIL STEAMSHIP COMPANY,
New York, June 7, 1852.

SIR: I have the honor to inform you that I have not been able, owing to the continued absence of Mr. Law, to return to you the schedules of running under the recent proposition made to the department and confirmed by your recent letter.

Our agents have been apprized of the change, and will be governed by your recent orders.

I hope to-morrow to forward the schedules to you.

With high respect, your obedient servant,

WM. H. ASPINWALL,
President.

Hon. N. K. HALL,
Postmaster General.

PACIFIC MAIL STEAMSHIP COMPANY,
New York, June 8, 1852.

SIR: Mr. Law returned to the city last evening. He does not regard the department's letter of May 31 as conforming, in some particulars which he will explain, to the joint letter we addressed to you on the 25th May.

I have the honor to refer you to him for further particulars, and will defer, until otherwise instructed, any instructions to our agents with reference to the change.

With high respect, your obedient servant,

W. H. ASPINWALL,
President.

Hon. N. K. HALL,
Postmaster General.

OFFICE OF THE UNITED STATES MAIL STEAMSHIP COMPANY,
New York, June 8, 1852.

SIR: I have the honor to acknowledge the receipt of your despatch of the 1st instant.

Upon the terms and conditions prescribed in the letters from the Post Office and Navy Departments of the 1st and 2d instant, I do not consider it compatible with the interest of the company to carry out the proposed arrangement for increased mail between this port and California. This company is prepared, agreeably to our letter of the 21st July, 1851, to carry the mail direct between New York and Aspinwall, and between New Orleans and Aspinwall, discontinuing the line between Havana and Chagres, and run the line direct between New York and New Orleans, touching at Havana twice a month, and leave to Congress the compensation for the increased service, over the amount paid under the existing contract, the company retaining the right to discontinue such increased service, upon giving the department one month's previous notice, and to resume

the service as now performed according to the requirements of the contract, viz: Twice a month between New York, New Orleans, Havana and Aspinwall. This is the only portion of the joint letter of the 25th of May last in which this company was interested, and to which its assent was given.

I have the honor to be, very respectfully, your obedient servant.

GEORGE LAW,
President.

Hon. H. K. HALL,
Postmaster General.

POST OFFICE DEPARTMENT,
June 10, 1852.

SIR: Your letter of the 8th instant is received, declining to carry out the arrangement between New York and Aspinwall, and New Orleans and Aspinwall, contemplated by the conditional order of the 31st ult., on the ground, as it is understood, that the Secretary of the Navy and Postmaster General will not hold themselves liable, either directly or indirectly, for any additional expense in the matter. In order, therefore, that no time may be lost in making the existing arrangement better known to the public, I enclose a schedule blank, which you will be pleased to fill with the proper dates of arrival and departure at the several points named, and return at your earliest convenience.

The postmaster of New York will be instructed to forward no California mails by the irregular steamers, except with positive assurance that they will go forward from Aspinwall and Panama without delay, and without additional expense to the department.

I am, respectfully, your obedient servant,

W. H. DUNDAS.

GEORGE LAW, Esq.,
President U. S. Mail Steamship Company, New York.

POST OFFICE DEPARTMENT,
June 10, 1852.

SIR: Your letter of the 8th instant came to hand yesterday. To-day we have received from Mr. Law a letter declining to carry out the arrangement contemplated by the conditional order of the 31st ultimo, on the ground, as it is understood, that the Secretary of the Navy and the Postmaster General will not hold themselves liable, either directly or indirectly, for any additional expense in the matter.

In order, therefore, that no time may be lost in making the existing arrangement better known to the public, I enclose a schedule blank, which you will be pleased to fill with the proper dates of arrival and departure at the several points named, and return at your earliest convenience.

The postmaster of New York will be instructed to forward no California mails by the irregular steamers, except with positive assurance that they will go forward from Aspinwall and Panama without delay, and without additional expense to the department.

I am, very respectfully, your obedient servant,

W. H. DUNDAS.

WM. H. ASPINWALL, Esq.,

President Pacific U. S. S. Co., New York, N. Y.

NAVY DEPARTMENT, *June 12, 1852.*

SIR: I have the honor to enclose herewith copy of a letter* addressed to this department by George Law, esq., president of the United States Mail Steamship Company, in relation to the decisions of the Postmaster General and the Secretary of the Navy of the 1st and 2d instant, and to ask whether it is the intention of the Post Office Department to make any further change in the mail line between New York and New Orleans, and between New Orleans and Aspinwall.

I am, very respectfully, your obedient servant,

WILL. A. GRAHAM.

Hon. N. K. HALL,

Postmaster General.

PACIFIC MAIL STEAMSHIP COMPANY,

New York, June 12, 1852.

SIR: I have the honor to acknowledge receipt of your favor of 10th instant, and much regret that the want of a proper understanding should prevent the arrangement being carried out which is obviously so much for the interest and credit of all concerned.

We have dates this morning which are only twenty-six days old from San Francisco, and eleven days old from Panama; and this, too, although the Oregon, on her way from San Francisco to Panama, touched at three way ports.

On the other hand, I observe that the mail steamers which left Panama for San Francisco on the 27th ultimo with the mails hence of 9th (say 10th, the 9th being Sunday,) ultimo, took also dates from New York of the 15th ultimo, say five days later than those by the mail, owing to the zigzag of the latter via Havana; and I do not see how it will be possible to prevent mail matter going by express men, who overtake the mail in this manner at Panama. We use every possible diligence in preventing mail matter going up from Panama in the steamers, and cannot discover that any does go; but as we know it does go from here, we cannot doubt it is smuggled on board as baggage in trunks, &c.

* Mm.—Letter referred to is substantially the same as addressed to the Postmaster General by Mr. Law on 8th June, 1852.

Our schedule will be the same on the Pacific, whatever be done on this side of the isthmus, viz: we leave Panama on the arrival of the Atlantic mails, and leave San Francisco for Astoria on arrival of the same mails at the former place. Our days of departure from San Francisco are the 1st and 16th of each month—our Oregon boat leaving Astoria in time to connect at San Francisco on these days, except when prevented by unavoidable accident, or by weather.

I will again see Mr. Law, and endeavor to have him explain his meaning so that you may understand it.

Very respectfully, your obedient servant,

WM. H. ASPINWALL,
President.

Hon. N. K. HALL,
Postmaster General.

POST OFFICE DEPARTMENT, *June 14, 1852.*

SIR: Your note of the 12th instant, enclosing the copy of a letter from George Law, esq., in relation to the late conditional order for a change of arrangement on the New York, New Orleans, and Chagres line, and asking whether it is the intention of the Post Office Department to make any further change in said line, is received.

In answer, I have the honor to inform you that the proposition for the change contemplated by the order referred to having come from the United States Mail Steamship Company, and that company, by Mr. Law's present letter, having declined to carry the arrangement into effect, on the ground, as it is understood, that the Secretary of the Navy and Postmaster General will not agree to submit the matter to Congress hereafter upon a question of increased compensation, it follows, as a matter of course, that until further order the line will continue unchanged.

For the information of the Navy Department, I take the liberty of enclosing a copy of Mr. Law's letter to this department of 21st July, 1851, referred to in his letter to you of the 10th instant.

I am, very respectfully, your obedient servant,

W. H. DUNDAS,
For the Postmaster General.

Hon. W. A. GRAHAM,
Secretary of the Navy, Washington, D. C.

POST OFFICE DEPARTMENT, *June 14, 1852.*

SIR: Your letter of the 12th instant is received.

In his letter of the 8th instant, Mr. Law says: "Upon the terms and conditions prescribed in the letters from the Post Office and Navy Departments of the 1st and 2d instant, I do not consider it compatible with the interest of this company to carry out the proposed arrangement," &c.

It is not perceived that the order, as made, differs from Mr. Law's proposition essentially in any respect, except it be in the fact, that the Secretary of the Navy and Postmaster General decline to be responsible, either directly or indirectly, for any additional expense in the matter; in other words, that they decline to join in submitting the subject to Congress hereafter, upon a question of increased compensation to the company. If the matter must be submitted to Congress, would it not be advisable that it be done at once?

I am, respectfully, your obedient servant,

W. H. DUNDAS,
For the Postmaster General.

WILLIAM H. ASPINWALL, Esq.,
Pres't Pacific M. S. S. Co., New York, N. Y.

OFFICE OF THE U. S. MAIL STEAMSHIP COMPANY,
June 15, 1852.

SIR: I have the honor to acknowledge the receipt of your letter of the 10th instant.

The impression of the department that this company declines to carry out the proposition for such encreased service as shall be required for direct mails between New York and Aspinwall, New Orleans and Aspinwall, and New York and New Orleans, via Havana, each twice a month, "on the ground that the Secretary of the Navy and the Postmaster General will not hold themselves liable, either directly or indirectly, for any additional expense in the matter," is not, as the case is understood by the company, the actual attitude in which the matter stands.

In my letter to the department of the 21st July, 1851, embodying this proposition, it was alluded to as an experiment intended to meet the public wants, and a general demand for increased mail facilities between the Atlantic and Pacific portions of the United States beyond the stipulations of the existing contract, which, being voluntary on our part, and requiring the employment of several additional steamers, we claimed the right, should it prove too onerous and expensive to the company, to discontinue, and to return to the existing schedule upon giving the department one month's notice.

In relation to compensation, I said: "Still, desirous of promoting to the utmost the interest and convenience of the public, we are entirely willing to perform the additional service in the confident expectation that a sense of justice will induce Congress to make such further provision as may be considered a suitable compensation for it."

This was the basis of the recent renewal of the proposition in the joint letter of the 25th May last. But the tenor of the letters of the Secretary of the Navy and the Postmaster General, of the 1st and 2d instant, seems to admit of an interpretation beyond a determination not to hold themselves liable, directly or indirectly, for any additional expense. It seems to preclude the idea of any application hereafter on the part of this company to Congress for any additional compensa-

tion, whatever may be the additional performance of mail service, and to be a distinct negative, by the departments, to which we become parties, upon anything additional that Congress may deem it just and expedient to allow. It seems also to preclude the right on the part of the company to go back to the schedule under the contract.

While it has not been the intention of this company to hold either of the departments liable, directly or indirectly, for any additional mail service beyond the conditions of the contract, but to perform it, subject entirely to the decision of Congress, I desire respectfully to say that I do not feel authorized to place the company in a position that would preclude it from applying for or accepting such additional allowance as, in the judgment of Congress, might be considered equitable.

By the terms of the contract for running between New York and New Orleans, Havana and Chagres, twice each month, we stipulate to employ five steamships in the performance of the mail service, two of them being spare ships. The proposed service will require six steamers in constant service, and three spare ships. We were entirely willing to make the trial, and to continue the service, if it should prove as advantageous to the public as was supposed, and the business of the company would justify the increased expenditure to which it would be subjected; but if it should not, or if Congress should not regard it of sufficient importance to pay such compensation as would enable the company to perform the additional service without loss, the company reserved the right to return to the former schedule, viz: twice a month between New York and New Orleans, and twice a month between Havana and Aspinwall. In such case, it was also the intention to give the Postmaster General due notice, one month being thought sufficient for that purpose.

Upon this basis the company is prepared to enter at once upon this arrangement, to carry it out to the best of its ability, and to contribute to the extent of its means to the mail facilities between New York and California.

I have the honor to be, very respectfully, your obedient servant,
GEORGE LAW, *President*.

Hon. N. K. HALL,
Postmaster General.

OFFICE OF THE UNITED STATES MAIL STEAMSHIP COMPANY,
New York, June 16, 1852.

SIR: Since my letter of yesterday, addressed to the Postmaster General, was written, I have been favored with a copy of Mr. Aspinwall's letter to the Postmaster General of the 12th inst., and the reply of the department of the 14th inst.

I perceive by the reply that we have given a construction to the letters of the Secretary of the Navy and the Postmaster General, addressed to me, different from that given by the departments themselves. Upon the basis of my letter of yesterday, which seems to be in accordance with the reply of the department to Mr. Aspinwall of

the 14th., int, we are prepared to enter at once upon the proposed arrangement, and to try it in accordance with the enclosed schedule.

The change of day for leaving New York for New Orleans (as will be seen by the schedule) is made for the purpose of enabling the mails to reach New Orleans before the departure of the mail steamers from that port to Aspinwall, by which the mails and shippers will have the advantage of two routes, to send letters and duplicates by one route if not sent by the other. It will also afford a partial remedy, should any accident happen to the direct line from New York to Aspinwall.

I have the honor to be, very respectfully, your obedient servant,
 GEORGE LAW,
President.

Hon. W. H. DUNDAS,
Acting Postmaster General.

United States Mail Steamship Company.—Assignees of A. G. Sloc, contractor.—Proposed time schedule, as per letter 15th of June 1852.—New York and Aspinwall line.

Leave New York on the 5th and 20th of each month ;
 Arrive at Aspinwall about the 14th and 29th of each month.
 Returning, leave for New York on the arrival of the Pacific mails at Aspinwall.

New York and New Orleans line, (touching at Havana each way.)

Leave New York on the 12th and 27th of each month ;
 Arrive in New Orleans about the 22d and 7th of each month.
 Returning, leave New Orleans on the 11th and 26th of each month, and arrive in New York about the 21st and 6th.

New Orleans and Aspinwall, direct line.

Leave New Orleans on the 7th and 22d of each month ;
 Arrive at Aspinwall about the 14th and 29th of each month.
 Returning, leave Aspinwall on the arrival of the Pacific mails.

POST OFFICE DEPARTMENT, June 16, 1852.

SIR: William H. Lord is appointed agent to take charge of the mails out to California on the next regular trip. * * * * *
 His letter of appointment states that he will leave New York on the 20th inst., as at the time it was written it was expected the late order for a change of schedule on the line would be carried into effect. Mr. Law, however, having signified his unwillingness to agree to the conditions of said order, the old arrangement will continue, and Mr. Lord will leave on the 24th of this month.

You will not send any mails on the 20th, unless the contractors give assurance that they will go through without delay, and without addi-

tional expense to the department. Nothing can be gained by sending out mails to remain at Aspinwall or Panama until the arrival of the mails by the Havana line, leaving New York four days later.

I am, respectfully, your obedient servant,

W. H. DUNDAS,
For Postmaster General.

WM. V. BRADY, Esq.,
Postmaster, New York, N. Y.

POST OFFICE DEPARTMENT, *June 18, 1852.*

SIR: Your letters of the 15th and 16th inst., respectively, are received.

In reply, I have to say that, so far as this department was concerned, and the same, we have no doubt, is true of the Navy Department, it was not the intention to hold your company to the proposed arrangement, after a fair trial, should the change be found to operate disadvantageously to either party. It is, therefore, understood that, should it be found for the interest either of the company or the government to return to the existing arrangements, this may be done, as you propose, on a month's notice by one party to the other; and the change may take effect *from and after the 5th of next month*. Please state the probable days of arrival at New York and New Orleans by the direct steamers.

We will prepare the advertisement of the schedule, so that it may be published in the newspapers here as early as Tuesday morning next, adopting the days for both lines named in the schedule accompanying your letter of the 16th inst.

The Secretary of the Navy will be advised to-day of the substance of this letter, that he may also address you on the subject.

I am, very respectfully, your obedient servant,

W. H. DUNDAS,
For the Postmaster General

GEORGE LAW, Esq.,
Pres. U. S. Mail S. S. Co., New York, N. Y.

POST OFFICE DEPARTMENT,
June 18, 1852.

SIR: Herewith I have the honor to enclose copies of two letters, one bearing date the 15th and the other the 16th instant, received to-day from George Law, esq., relating to the proposed change on the New York, New Orleans, and Chagres line.

The letter from this department to Mr. Aspinwall, of the 14th inst., referred to by Mr. Law, is in substance the same as the one I had the honor of addressing to you of same date.

It now appears that Mr. Law is ready to carry out the arrangement

contemplated by the order of the 31st ult., provided his company can be at liberty to return to the existing arrangement on giving the department one month's notice, if, on a fair trial, the proposed plan shall be found to operate unfavorably to their interest. He proposes, however, to change the days on the Havana line, to leave New York on the 12th and 27th, instead of the 9th and 24th of each month, and to leave New Orleans on the 11th and 26th, instead of the 10th and 25th, which change, on the part of this department, is assented to as a part of the arrangement; and Mr. Law is also further advised that, should it be found for the interest either of the company or the government to return to the existing arrangement, the same may be done as he proposes, on one month's notice by one party to the other, the change to take effect from and after the 5th of next month.

Should you concur in the modifications above mentioned, you will have the goodness to inform Mr. Law thereof at your earliest convenience.

I am, very respectfully, your obedient servant,

W. H. DUNDAS,
For the Postmaster General.

Hon. WM. A. GRAHAM,
Secretary of the Navy, Washington, D. C.

POST OFFICE DEPARTMENT,
June 18, 1852.

SIR: Mr. Law has signified his willingness to carry out the arrangement on the New York, New Orleans, and Chagres line, contemplated by the order of the 31st ultimo, with the understanding that, if found on a fair trial to work unfavorably to their interest, they shall have the right, on giving one month's notice, to return to the existing arrangement. He also proposes to leave New York, on the Havana line, the 12th and 27th of each month, instead of the 9th and 24th; and New Orleans the 11th and 26th, instead of the 10th and 25th. These modifications are assented to by the department, (with this additional proviso, however, which, it is hardly probable, will ever have any practical effect,) that the government retains the right, also, of revoking the order on a month's notice, if, as suggested in your letter of the 25th ultimo, "this plan be found to work disadvantageously."

The change may take effect *from and after the 5th proximo.*

I am, very respectfully, your obedient servant,

W. H. DUNDAS,
For the Postmaster General.

WILLIAM H. ASPINWALL, Esq.,
President Pacific M. S. S. Co., New York, N. Y.

PACIFIC MAIL STEAMSHIP COMPANY,
New York, June 17, 1852.

SIR: I have seen Mr. Law since receiving your letter of the 14th instant, and find, as expected, that he misunderstood your previous

letter. I hope that after receiving his letter, which went forward by the last mail, there will be no obstacle in the way of our making a good beginning on the 5th July of the new arrangement.

In answer to the closing inquiry in your letter, I beg leave to suggest that as this arrangement is to be continuous only in case it is successful, no appeal could be properly made to Congress until the experiment has been tried.

I have the honor to be, with high respect, your obedient servant,
WILLIAM H. ASPINWALL, *President.*

Hon. N. K. HALL,
Postmaster General.

POST OFFICE, NEW YORK,
June 19, 1852.

SIR: In answer to yours of the 16th instant, relative to California steamer of the 20th instant, I herewith hand you letters upon that subject from Messrs. W. H. Aspinwall and M. O. Roberts.

I shall reserve all mail matter, therefore, for the steamer of the 24th June.

Respectfully, your obedient servant,
WILLIAM V. BRADY, *Postmaster.*

Hon. N. K. HALL,
Postmaster General, Washington, D. C.

OFFICE OF THE UNITED STATES MAIL STEAMSHIP CO.,
New York, June 18, 1852.

SIR: In relation to the direct steamer of the 21st, I presume that our correspondence, and that of Mr. Aspinwall with the department, (not received at the department when Mr. Dundas' letter was written,) was satisfactory, and that the contemplated arrangement for direct mails between New York and Aspinwall, and New Orleans and Aspinwall will go into early effect.

I agree with the department, that "nothing can be gained by sending out mails to remain at Aspinwall or Panama until the arrival of the mails by the Havana line leaving New York four days later;" and I take it for granted that they will be sent forward by the Pacific Mail Steamship Company without delay; but for an answer in that respect, I beg leave to refer you to William H. Aspinwall, esq., president of the Pacific Company.

Very respectfully, your obedient servant,
M. O. ROBERTS, *Agent.*

P. S. The 20th falling on Sunday, the Illinois will leave on Monday the 21st at 2 p. m.

M. O. ROBERTS, *Agent.*

Hon. WILLIAM V. BRADY,
Postmaster, &c.

PACIFIC MAIL STEAMSHIP COMPANY,
New York, June 18, 1852.

SIR: In returning you the letters from the Post Office Department and Mr. Roberts, I write in the expectation expressed by the latter, that after the 24th instant the mails will be forwarded to California on the 5th and 20th of each month, without detention at Panama.

In the present case I see no alternative but to detain the mails until the 24th, as our arrangements in the Pacific have not contemplated the despatch of four mail steamers from Panama in each month immediately on arrival there of mails from the Atlantic States.

Very respectfully, your obedient servant,

WM. H. ASPINWALL, *President.*

WM. V. BRADY, Esq., *Postmaster.*

OFFICE OF THE UNITED STATES MAIL STEAMSHIP COMPANY,
New York, June 21, 1852.

SIR: I have the honor to acknowledge the receipt of your letter of the 18th instant.

This company is prepared to enter upon the proposed arrangement for the direct line between New York and Aspinwall and New Orleans and Aspinwall, and the line between New York and New Orleans, via Havana, at the period fixed by the department—5th July.

The days of arrival at New York and New Orleans from Aspinwall by the direct line cannot be definitely stated. It will depend upon the arrival of the Pacific steamer at Panama and the mails at Aspinwall, and also upon the state of the weather. Judging from previous running in both oceans, the arrivals at New York direct from Aspinwall will be about the 12th and 27th of each month, and at New Orleans about the 10th and 25th. I give this as an approximate time, as the department will readily perceive that we cannot fix any positive days of sailing, when so much depends upon the arrival of the mails at Aspinwall, and upon the weather.

I am, very respectfully, your obedient servant,

GEORGE LAW, *President.*

WM. H. DUNDAS, Esq., *Acting Postmaster General.*

POST OFFICE DEPARTMENT,
June 22, 1852.

SIR: Your note of the 19th instant, enclosing letters from Messrs. Roberts and Aspinwall, is received.

It appears the department has been resting under a misconception, to say the least, in supposing the mails sent from your office for California on the 5th and 20th ultimo, and 5th instant, would go forward from Aspinwall and Panama without delay.

In future you will forward no mails for the Pacific except by the regu-

lar contract line via Havana, unless you have assurance from the contractors that there shall be no delay in their transmission, and no additional expense to the department attending them.

I am, respectfully, your obedient servant,

N. K. HALL.

WM. V. BRADY, Esq.,
Postmaster, New York, N. Y.

POST OFFICE DEPARTMENT,
June 22, 1852.

SIR: No reply having been received from Mr. Law to the letter from the department of the 11th instant, the schedule for the proposed change on his line has not been published.

The existing arrangement will continue until further order, and in the mean time the department will consider the propriety of adopting fixed schedules for the coming year, or of submitting the whole matter for the action of Congress.

I am, very respectfully, your obedient servant,

N. K. HALL.

WM. H. ASPINWALL, Esq.,
President Pacific Mail Steamship Company, New York, N. Y.

POST OFFICE DEPARTMENT,
June 22, 1852.

SIR: No reply having been received to the letter addressed to you, under date of the 18th instant, the schedule for the proposed change on your line has not been published.

The existing arrangement will continue until further order, and in the mean time the department will consider the propriety of adopting fixed schedules for the coming year, or of submitting the whole matter for the action of Congress.

I am, very respectfully, your obedient servant,

N. K. HALL.

GEORGE LAW, Esq.,
President U. S. Mail Steamship Company, New York, N. Y.

OFFICE OF THE UNITED STATES MAIL STEAMSHIP COMPANY,
New York, June 23, 1852.

SIR: Mr. Aspinwall informs me this morning that you hesitate to carry out the arrangement for direct lines between New York and Aspinwall, and New Orleans and Aspinwall, on the ground that no answer had been received on the 22d instant to the letter of the department of the 18th.

Neither Mr. Law, Mr. Roberts, or myself supposed that the completion of the arrangement and the publicity of it depended upon any further reply ; inasmuch as the proposition had been mutually agreed upon, the schedule of running sent by Mr. Law to the department, and the letter of the department of the 18th having directed that the arrangement go into effect on the 5th of July. But a reply was written by Mr. Law on Monday, the 21st, (the first business day after the letter of the department was received by him,) stating the determination of this company to comply with the arrangement, and to enter upon it on the day named by the department. The letter of the department having been sent from the post office to Mr. Law's house, he did not receive it until Saturday evening, too late for the mail of that day. His reply ought to have been received at the department on the morning of the 22d. Lest it may have miscarried altogether, I take the liberty to enclose a copy of it.

Understanding the arrangement to have been closed, orders were sent out by the Illinois on the 21st to Aspinwall and California, with copies of the new schedule, and by letter and telegraph to New Orleans, to make all the necessary preparations, and announced by advertisement the change of sailing days. Remote agencies elsewhere were also advised of the change, and directed to give immediate and extended publicity of it. It will be impossible to recall these directions in time to prevent serious embarrassment and difficulty, and it would subject us also to loss and public censure.

We have not pressed this arrangement upon the department, but have been willing to make a trial of it, believing it to be for the public convenience and advantage, not holding the department liable for the increased service, but leaving the matter to the future decision of Congress. Meanwhile, each party being at liberty to discontinue it on a month's notice. Now that arrangement is made and announced, both companies desire to carry it out ; and I beg leave respectfully to express the hope that the instructions given by the department for the commencement of the arrangement on the 5th July may not be recalled.

I have the honor to be, very respectfully, your obedient servant,
E. CROSWELL.

Hon. N. K. HALL,
Postmaster General.

P. S. Mr. Law would have written had he been at the office to-day.

NEW YORK, June 24, 1852.

SIR : I have seen Mr. Law, and he has shown me the copies of the letters he has written on the 21st and 23d instants in reference to the proposed change on his line. It seems the one of the 21st should have been received at the department before I left. The company are now quite anxious to have the arrangement go into effect on the 5th of next month ; and, unless they hear from you to-day by telegraph

before their steamer sails, they will not revoke the instructions which they sent out by the steamer of the 21st.

I presume the matter now stands where the Post Office and Navy Departments intended it should—that is, if the arrangement is carried out, there is to be no obligation on either to favor an application for increased allowance from any quarter whatever. Messrs. Law, Roberts, and Crosswell have just stated to me that this is their understanding of the matter; but, if found to work well, they intend to bring the subject before Congress themselves; and, if allowed sufficient increased pay, they will continue the arrangement; if not, they will return to the old schedule.

I enclose the schedule and letter sent to Mr. Brady by the company; and from these and the company's letter to the department of the 23d instant the schedule I prepared may be perfected. It will be seen that in the enclosed the times of arrival at Havana are stated, and these it may be well to insert in the schedule to be published.

Notice in the Washington papers, and short special letters to the postmasters of New York, Charleston, Savannah, and New Orleans, will, I presume, be all that is necessary to be done in order to have the arrangement go into effect on the 5th of July as proposed.

I have the honor to be, very respectfully,

HORATIO KING.

Hon. N. K. HALL,
Postmaster General.

OFFICE OF THE U. S. MAIL STEAMSHIP COMPANY,
New York, June 24, 1852.

SIR: I have the honor to acknowledge the receipt of your letter of the 22d instant, in which you advise that no reply having been received to the letter addressed by the department to me, under date of the 18th instant, the schedule for the proposed change on this line has not been published, and that the existing arrangement will be continued until further order.

I considered the arrangement as completed under the schedule addressed by me to the department on the 16th instant, the receipt of which was acknowledged by me in the letter from the department of the 18th; and I did not suppose that any reply in relation to the time of the arrival of the direct steamers at New York and New Orleans was necessary to the publication of the schedule, as it could of course be only on approximation. Still, a reply was sent the first business day after I received it—it having been sent to my residence in the course of Saturday, the 19th—first seen by me on that evening, and answered on Monday, 21st.

Orders having been sent out by the Illinois on the 21st to Aspinwall and California to conform to the new schedule, and also to New Orleans and other agencies, and the vessels having been advertised, and the arrangements made, it will not be practicable to recall them until the next steamer sails, or to prevent their beginning upon the new

schedule. But, if the department desire it, I will send out instructions by the earliest steamer countermanding the arrangement, and ordering a return to the former schedule.

I have the honor to be, very respectfully, your obedient servant,
GEORGE LAW, President.

Hon. N. K. HALL,
Postmaster General.

POST OFFICE DEPARTMENT,
June 24, 1852.

SIR: I have received your letter of the 23d instant with enclosure, and have this day ordered the adoption of the schedule proposed for the direct line between New York and Aspinwall, and New Orleans and Aspinwall, and the line between New York and New Orleans via Havana, to go into effect on the 5th July next.

Notice of this change will appear to-morrow in the papers of this city, and the necessary instructions to postmasters be issued immediately.

I am, very respectfully, your obedient servant,
N. K. HALL.

WM. H. ASPINWALL, Esq.,
President Pacific Mail Steamship Company, New York.

POST OFFICE DEPARTMENT,
June 24, 1852.

SIR: I have received the letter of Mr. Croswell of the 23d instant, and also yours of the 21st instant.

The schedule proposed for the direct line between New York and Aspinwall, and New Orleans and Aspinwall, and the line between New York and New Orleans via Havana, has been adopted, to go into effect on the 5th of July next.

Notice of this change will appear to-morrow in the papers of this city, and the necessary instructions to postmasters issued immediately.

I am, respectfully, your obedient servant,
N. K. HALL.

GEORGE LAW, Esq.,
President U. S. Mail Steamship Company, New York.

POST OFFICE, *New York, March 9, 1853.*

SIR: Permit me to call your attention to the enclosed advertisement of the United States Pacific Mail Steamship Companies, and to ask if

it is the intention of the department to order the making up of mails for California, &c., by the steamers of the 13th and 28th of each month, in addition to those as now sent on the 5th and 20th.

Respectfully, your obedient servant,

WM. V. BRADY, *Postmaster.*

Hon. JAMES CAMPBELL,

Postmaster General, Washington, D. C.

POST OFFICE, *New York, March 17, 1853.*

SIR: In connexion with the above advertisement, permit me to call your attention to my letter of the 9th instant, relative to the new arrangement of the United States and Pacific Mail Steamship Companies.

Respectfully, your obedient servant,

WM. V. BRADY, *Postmaster.*

Hon. JAMES CAMPBELL,

Postmaster General, Washington, D. C.

POST OFFICE DEPARTMENT,
March 25, 1853.

SIR: On report of the postmaster of New York that the United States Pacific Mail Steamship Companies have advertised to put on an additional semi-monthly line of steamers between New York and San Francisco, via Aspinwall and Panama, and it appearing from such advertisement that they intend to take the mail also by these additional ships, I have made an order, conditional upon your concurrence therein, instructing the postmasters of New York and San Francisco to make up and forward a *letter mail* by said steamers, with the express understanding, however, that the government is to be in nowise holden, either directly or indirectly, for any increased expense in the matter.

If you concur in this decision, please advise the two companies at your earliest convenience. The first intermediate steamer is advertised to sail from New York on the 28th instant.

I am, sir, very respectfully, your obedient servant,

JAMES CAMPBELL,
Postmaster General.

Hon. JAMES C. DOBBIN,

Secretary of the Navy.

POST OFFICE DEPARTMENT, *March 25, 1853.*

SIR: Your respective letters of the 9th and 17th instant, reporting that the United States and Pacific Mail Steamship Companies have advertised to put on an additional line of semi-monthly steamers between New York and San Francisco, via Aspinwall and Panama, and asking if you shall send a mail by them, has been received.

In answer, I have to say, that, the Secretary of the Navy concurring, you will make up and forward a *letter mail only* by said steamers, provided the contractors will carry the same, with the express understanding that the government is to be in nowise holden, either directly or indirectly, for any increased expense in the matter. It appears by their advertisement that they intend to take the mail weekly.

No mail agent will be appointed to take charge of the mail by the intermediate steamers.

I am, sir, very respectfully, your obedient servant,
JAMES CAMPBELL,
Postmaster General.

WM. V. BRADY, Esq.,
Postmaster, New York.

POST OFFICE DEPARTMENT,
March 25, 1853.

SIR: On report of the postmaster at New York that the contractors on the New York and San Francisco mail line have advertised to put on an additional semi-monthly line of steamers between New York and San Francisco, via Aspinwall and Panama, and it appearing from such advertisement that they intend to take the mail also by these additional steamers, he is instructed to make up and send a *letter mail only* by such ships, with the express understanding, however, that the government is to be in nowise holden, either directly or indirectly, for any increased expense in the matter.

The first intermediate steamer is advertised to sail from New York on the 28th instant. If the contractors consent to carry on these terms, any letter mails for the Pacific, despatched by you to New York, will be duly forwarded.

I am, sir, very respectfully, your obedient servant,
JAMES CAMPBELL,
Postmaster General.

GEO. W. GORDON, Esq.,
Postmaster Boston, Mass.

POST OFFICE DEPARTMENT,
March 25, 1853.

SIR: The United States and Pacific Mail Steamship Companies having advertised to put on an additional line of semi-monthly steamers between New York and San Francisco, via Aspinwall and Panama, you are hereby authorized to make up, and forward by said steamers, a *letter mail only*, provided the contractors will carry the same with the express understanding that the government is to be in nowise holden, either directly or indirectly, for any increased expense in the matter.

It is not intended to have mail agents appointed to take charge of these intermediate mails.

I am, sir, very respectfully, your obedient servant,

JAMES CAMPBELL,

Postmaster General.

POSTMASTER, *San Francisco, Cal.*

POST OFFICE DEPARTMENT,

March 25, 1853.

SIR: On report of the postmaster of New York that the United States and Pacific Mail Steamship Companies have advertised to put on an additional semi-monthly line of steamers between New York and San Francisco, via Aspinwall and Panama, and it appearing from such advertisement that they intend to take the mail also by these additional ships, I have made an order, conditional upon the concurrence of the Secretary of the Navy, instructing the postmasters of New York and San Francisco to make up, and forward by such intermediate steamers, a *letter mail only*, with the express understanding, however, that the government is to be in nowise holden, either directly or indirectly, for any increased expense in the matter.

The Secretary of the Navy has been requested to communicate to you his decision on the subject.

I am, sir, very respectfully, your obedient servant,

JAMES CAMPBELL,

Postmaster General.

GEORGE LAW, Esq.,

President U. S. M. S. S. Co., N. Y.

POST OFFICE DEPARTMENT,

March 25, 1853.

SIR: On report of the postmaster of New York that the United States and Pacific Mail Steamship Companies have advertised to put on an additional semi-monthly line of steamers between New York and San Francisco, via Aspinwall and Panama, and it appearing from such advertisement that they intend to take the mail also by these additional ships, I have made an order, conditional upon the concurrence of the Secretary of the Navy, instructing the postmasters of New York and San Francisco to make up, and forward by such intermediate steamers, a *letter mail only*, with the express understanding, however, that the government is to be in nowise holden, either directly or indirectly, for any increased expense in the matter.

The Secretary of the Navy has been requested to communicate to you his decision on the subject.

I am, sir, very respectfully, your obedient servant,

JAMES CAMPBELL,

Postmaster General.

WILLIAM H. ASPINWALL, Esq.,

President P. M. S. S. Co., N. Y.

POST OFFICE DEPARTMENT, *March 25, 1853.*

SIR: On report of the postmaster of New York, that the United States and Pacific Mail Steamship Companies have advertized to put on an additional semi-monthly line of steamers between New York and San Francisco, via Aspinwall and Panama; and it appearing from such advertisement that they intend to take the mail also by these additional steamers, he is instructed to make up and forward by such ships a *letter mail only*, with the express understanding, however, that the government is to be in nowise holden, either directly or indirectly, for any increased expense in the matter.

A despatch of the mail by the intermediate steamers, as above contemplated, will have the effect, of course, to lessen the bulk of the mail matter sent on the regular schedule days under the contracts; and if the steamship contractors shall take the mail by the additional steamers, you will be pleased to see that it is duly conveyed across the isthmus at the price paid your company for this part of the service. It is not intended to appoint agents to take charge of the mail by the intermediate steamers.

I am, sir, very respectfully, your obedient servant,

JAMES CAMPBELL,

Postmaster General.

WILLIAM C. YOUNG, Esq.,

President Panama Railroad Company, New York.

NAVY DEPARTMENT, *March 26, 1853.*

SIR: I have the honor to acknowledge the receipt of your communication of yesterday's date, in relation to an advertisement of the United States and Pacific Mail Steamship Companies, to put on an additional semi-monthly line of steamers between New York and San Francisco, via Aspinwall and Panama, and to inform you of the concurrence of this Department in the order issued by the Postmaster General instructing the postmasters of New York and San Francisco to make up and forward a *letter mail* by said steamers, of which the companies will be informed.

I have the honor to be, sir, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. JAMES CAMPBELL,

Postmaster General.

POST OFFICE NEW YORK, 3½ P. M.,

March 26 1853.

SIR: Upon the receipt of your favor of the 25th instant, I wrote to Mr. Roberts, agent of the line, asking him to advise me whether the company would take a mail subject to the conditions referred to in your letter, which I enclosed to him.

I herewith send you his reply to that note, and unless otherwise instructed by the department, I shall not send any mail on Monday.

If you will permit me, I would suggest (provided arrangements are entered into with the company for the transit of the mails by the additional steamers) that that portion of your letter referring to "*a letter mail only*," be so modified as to permit newspapers to be sent. The exclusion of the press in the proposed arrangements would seriously affect their interests and array them against the department.

Respectfully, your obedient servant,

WM. V. BRADY,
Postmaster.

HON. JAS. CAMPBELL,
Postmaster General, Washington, D. C.

U. S. MAIL STEAMSHIP COMPANY,
New York, March 26, 1853.

DEAR SIR: Mr. Law and Mr. Croswell are both out of town, and, without consulting them, I do not feel willing to reply fully to your letter, and that of the Postmaster General. I will, however, consult them upon the subject at the earliest opportunity. In the mean time, if you desire to send a mail by the Crescent City on Monday, we are prepared to take it.

Yours, very truly,

M. O. ROBERTS.

WM. V. BRADY, Esq., *Postmaster.*

POST OFFICE, NEW YORK, *March 28, 1853.*

SIR: Enclosed I hand you two letters received this day between 12m. and 1 p. m.

One of them is from the agent of the United States Mail Steamship Company, and the other from the vice-president of Pacific Mail Steamship Company.

I also enclose you copies of my replies to those letters. The notices were received at so late an hour (the steamer sailing at 2 p. m.) that I could give no public notice of the arrangement.

Respectfully, your obedient servant,

WM. V. BRADY, *Postmaster.*

HON. JAS. CAMPBELL,
Postmaster General, Washington, D. C.

U. S. MAIL STEAMSHIP COMPANY,
New York, March 28, 1853.

DEAR SIR: We have received a letter this morning from the Secretary of the Navy, in relation to sending a mail by the steamers which

we are putting on to the New York and Aspinwall line, in addition to those we have heretofore run upon that route, and I beg to inform you that this company cannot acquiesce in the position taken by the Post Office and Navy Departments in the matter; but as there is not time for us to give our views in full on this subject without missing the mails that would go by the steamer *Crescent City* to day, and feeling anxious to accommodate the public and the departments, we have concluded to take a mail to-day, without making any charge, if you desire to send one, and write our views on the subject to the departments hereafter.

Very respectfully, your obedient servant,

M. O. ROBERTS, *Agent*.

Hon. WM. V. BRADY, *Postmaster*.

P. S.—The company's cart will call for the mail at the usual hour

PACIFIC MAIL STEAMSHIP COMPANY,
New York, March 28, 1853.

SIR: This company is prepared to take from Panama any mails the government may desire, on their intermediate steamer from that port, leaving about the 10th April, on the conditions expressed in the Postmaster General's letter to them, dated 25th March, 1853.

I am, very respectfully, yours,

SAM'L W. COMSTOCK,
Vice President.

WM. V. BRADY, Esq.,
Postmaster, New York.

POST OFFICE, NEW YORK, *March 28, 1853.*

SIR: I have to acknowledge the receipt of your favor of this a. m., relative to California mail steamers, and the transit of an additional mail, and to advise you that I have this day sent, per United States mail steamer "*Crescent City*," a letter mail subject to the conditions referred to in your letter.

WM. V. BRADY, *Postmaster*.

SAM'L W. COMSTOCK, Esq.,
Vice President, &c., Pacific Mail Steamship Co.

POST OFFICE, NEW YORK,
March 28, 1853.

DEAR SIR: Your favor of this a. m. was received at ten minutes before one p. m.

In answer, I have to advise you that I shall make up and send, per

"Crescent City," this day, a letter mail for California, under the conditions that "the government is to be in nowise holden, either directly or indirectly, for any increased expense in the matter."

WM. V BRADY, *Postmaster.*

M. O. ROBERTS, Esq.,
Agent, &c., U. S. M. S. Co.

PACIFIC MAIL STEAMSHIP COMPANY,
New York, March 28, 1853.

SIR: I had the honor to receive on Saturday your letter of the 25th instant, and I have to day received a letter of the same tenor from the Navy Department.

The Pacific Mail Steamship Company assents to the arrangement directed by you of transporting mails on the intermediate steamers between Panama and San Francisco, and San Francisco and Panama, connecting with the steamers of the United States Mail Steamship Company hence on the 13th and 28th of each month, with the understanding that your order does not bind the department for any other compensation than is stipulated in our existing contracts, and that no extra allowance shall be considered as due unless sanctioned by Congress.

The present arrangement of running boats weekly is experimental, in the belief that the public requires additional service; and if discontinued, due notice will be given to the department of such intended discontinuance.

With high respect, sir, I am, your obedient servant,
SAM'L W. COMSTOCK,
Vice-President.

Hon. JAMES CAMPBELL,
Postmaster General.

POST OFFICE DEPARTMENT,
March 29, 1853.

SIR: Your letter of the 26th is received. In reply, I have to state that, as the order for the additional service on the New York and San Francisco mail line was made expressly on the condition that the government is thereby to be subject to no increased expense, and as newspapers are by law permitted to be sent outside of the mail, it was thought advisable to offer for conveyance by the additional steamers a letter mail only. On further consideration, however, I have modified the order so far as to authorize the sending, on the terms therein stated, of the newspaper as well as the letter mails by the steamers in question.

I am, sir, very respectfully, your obedient servant,
JAMES CAMPBELL,
Postmaster General.

WM. V. BRADY, Esq.,
Postmaster, New York.

POST OFFICE DEPARTMENT,
March 29, 1853.

SIR: I have the honor to inform you that, on further consideration, I have concluded to modify the order of the 25th instant, referred to in my letter to you of that date, so far as to authorize the sending of the newspaper as well as the letter mail by the additional semi-monthly steamers on the New York and San Francisco mail line, the condition of the order being unchanged. If you concur, please to advise the contractor.

I am, sir, very respectfully, your obedient servant,
JAMES CAMPBELL,
Postmaster General.

Hon. J. C. DOBBIN,
Secretary of the Navy.

POST OFFICE DEPARTMENT,
March 29, 1853.

SIR: Referring to my letter of the 25th instant, I have to state that, on further consideration, I have modified the order of that date so far as to authorize the sending of the newspaper as well as the letter mail by the additional semi-monthly steamers on the New York and San Francisco mail line, the condition of the order, of course, being unchanged.

I am, sir, very respectfully, your obedient servant,
JAMES CAMPBELL,
Postmaster General.

GEORGE LAW, Esq.,
President U. S. Mail Steamship Company, New York.

[Same to William H. Aspinwall, esq., president, &c., and to postmaster of San Francisco.]

POST OFFICE DEPARTMENT,
March 29, 1853.

SIR: Referring to my letter of the 25th instant, I have to state that, on further consideration, I have modified the order of that date so far as to authorize the sending of the newspaper as well as the letter mail by the additional semi-monthly steamers on the New York and San Francisco mail line, the condition of the order, of course, being unchanged. You will be pleased, therefore, to see that these mails are duly transported across the isthmus at the price paid your company for this part of the service.

I am, sir, very respectfully, your obedient servant,
JAMES CAMPBELL,
Postmaster General.

W. C. YOUNG, Esq.,
President Panama R. R. Company, New York.

NAVY DEPARTMENT,
March 31, 1853.

SIR: I have the honor to acknowledge the receipt of your communication of the 29th instant of your conclusion, on further consideration, to modify the order of the 25th instant, referred to in your letter to this department of the 25th instant, so far as to authorize the sending of the newspaper as well as the letter mail by the additional semi-monthly steamers on the New York and San Francisco mail line, the condition of the order being unchanged, and to inform you of the concurrence of this department, and that the contractors will be so advised.

I am, sir, very respectfully, your obedient servant,

J. C. DOBBIN.

Hon. JAMES CAMPBELL,
Postmaster General.

POST OFFICE DEPARTMENT,
April 1, 1853.

SIR: I am in the receipt of your letter of the 28th ultimo, by which I am advised that "the Pacific Mail Steamship Company assents to the arrangement directed by you [me] of transporting mails in the intermediate steamers between Panama and San Francisco, and San Francisco and Panama, connecting with the steamers of the United States Mail Steamship Company hence on the 13th and 28th of each month, with the understanding that your [my] order does not bind the department for any other compensation than is stipulated in our existing contracts, and that no allowance shall be considered as due unless sanctioned by Congress."

In reply, I have to inform you that the position of the department on this subject is precisely this:

1. I do not ask nor require you to carry any mail by the intermediate semi-monthly steamers which you propose to run on your line; but as you have, it appears, thought it for your interest, independently of the mails, to put on these additional steamers, I have considered it my duty to offer you the mail on the conditions mentioned in my letter to Mr. Aspinwall of the 25th ultimo.

2. In thus offering you the mail, it must be distinctly understood that this department neither consents to incur any increased expense in the matter, nor agrees, either directly or impliedly, in recognizing in any manner, any claim for extra compensation for any service your company may perform under the order of the 25th, modified by the further order of the 29th ultimo.

I am, sir, very respectfully, your obedient servant,

JAMES CAMPBELL,
Postmaster General.

SAMUEL W. COMSTOCK, Esq.,
Vice President Mail Steamship Company, New York.

POST OFFICE, *New York, April 6, 1853.*

SIR: Have any arrangements been made by the department with the contractors on the route between New York and San Francisco, relative to the transit of a mail on the additional trips advertised by the company?

As inquiries are daily made at this office upon the subject, will you please advise me in the matter.

Respectfully, your obedient servant,

WILLIAM V. BRADY, *Postmaster.*

HON. JAMES CAMPBELL,

Postmaster General, Washington, D. C.

POST OFFICE DEPARTMENT, *April 8, 1853.*

SIR: In answer to your note of the 6th instant, I have to inform you that the terms on which the mails are offered to be conveyed on the intermediate steamers between New York and San Francisco have been clearly stated to the contractors; and it is for the contractors themselves to determine whether they will take them or not.

I am, very respectfully, your obedient servant,

JAMES CAMPBELL,
Postmaster General.

POSTMASTER, *New York.*

POST OFFICE, *New York, April 13, 1853.*

SIR: Upon the receipt of your letter of the 8th instant, relative to mails for California, per intermediate steamers, I wrote to Howland and Aspinwall, and directed a letter to be written to M. O. Roberts, esq., and herewith hand you their reply to these communications.

I have, therefore, made up and sent, per "El Dorado," this day, a mail for that route.

Respectfully, your obedient servant,

WILLIAM V. BRADY, *Postmaster.*

HON. JAMES CAMPBELL,

Postmaster General, Washington, D. C.

UNITED STATES MAIL STEAMSHIP COMPANY,
New York, April 8, 1853.

SIR: We are prepared to take the mails by the intermediate steamers in the manner they were sent on the 28th ult., with or without newspapers, until the matter can be definitely arranged by the department.

Mr. Law is now in Washington, and will, no doubt, confer with the Postmaster General on the subject.

Very respectfully, your obedient servant,

M. O. ROBERTS, *Agent.*

GEORGE W. JENKINS, Esq., *Secretary.*

UNITED STATES MAIL STEAMSHIP COMPANY,
New York, April 27, 1853.

SIR: Upon an examination of the steamship *Crescent City* on the dry dock, on her recent return to port, we find that greater injury had been done to her keel than we had supposed, and that she cannot be got in readiness for her next voyage before Saturday, the 30th instant. She will sail on that day at 2 o'clock p. m.

This detention, however, will not prevent her regular connexion with the weekly line from Panama, nor delay the intermediate mail, should it be sent forward by the *Crescent City*.

I have the honor to be your obedient servant,

M. O. ROBERTS.

Hon. JAMES CAMPBELL,
Postmaster General.

POST OFFICE DEPARTMENT, *April 28, 1853.*

SIR: Your letter of the 27th instant, reporting that the *Crescent City* cannot be got in readiness for her next voyage before Saturday, the 30th instant, is received.

I am, sir, very respectfully, your obedient servant,

JAMES CAMPBELL,
Postmaster General.

M. O. ROBERTS, Esq.,
Agent United States Mail Steamship Company, New York.

POST OFFICE, *New York, April, 28, 1853.*

SIR: The *Crescent City*, intermediate steamer for California, advertised for to-day, will not sail until the 30th instant, at 2 o'clock p. m. In the event of my making up a mail by her for California, it was necessary that I should know from the contractors whether the mails would be transmitted upon the same terms as were those of the 28th March ultimo, and 13th April instant.

I therefore wrote to Mr. Roberts and Howland & Aspinwall, and herewith hand you copies of those letters, as also their replies thereto.

From the tenor of the letters from Mr. Roberts, I shall not feel authorized to make up and send a mail by the *Crescent City* on the 30th instant, unless otherwise instructed by the department. Have the kindness to advise me by telegraph to-morrow, (29th,) as also more fully by letter, per mail from Washington to-morrow evening.

Respectfully, your obedient servant,

WM. V. BRADY, *Postmaster.*

Hon. JAMES CAMPBELL,
Postmaster General, Washington, D. C.

POST OFFICE, *New York, April 23, 1853.*

SIR: The Crescent City being advertised for the 28th instant, will you please advise me whether you will take the California mails from this office upon the same terms and conditions as were those of the 28th March ultimo, and the 13th April instant.

W. V. BRADY, *Postmaster,*
Per G. W. JENKINS, *Secretary.*

M. O. ROBERTS, Esq.,
Agent United States Mail Steamship Company.

UNITED STATES MAIL STEAMSHIP COMPANY,
New York, April 25, 1853.

SIR: Your letter of the 23d instant was received this morning.

This company is prepared to take the California mails by the intermediate steamers, upon the same terms and conditions as it has taken, with the concurrence of the department, the direct mails between this city and Aspinwall.

Very respectfully, your obedient servant,

M. O. ROBERTS, *Agent.*

HON. WM. V. BRADY.

POST OFFICE, *New York, April 26, 1853.*

DEAR SIR: I am in receipt of your favor of the 25th instant, but as it is not a direct answer to my letter of the 23d instant, and as your letters to me are sent to the department, being part of my official report of mails sent for California, will you have the kindness to advise me whether the United States mails will be taken by the Crescent City on the 28th instant upon the same terms and conditions as were those of the 28th March ultimo, and the 13th April instant?

WM. V. BRADY, *Postmaster.*

M. O. ROBERTS, Esq.,
Agent, &c., United States Mail Steamship Company.

UNITED STATES MAIL STEAMSHIP COMPANY,
New York, April 27, 1853.

SIR: I received this morning your letter of yesterday. We are prepared to take the United States mails by the intermediate steamers of the 13th and 28th of each month upon the terms and conditions they are taken by the direct steamers of the 5th and 20th of each month. These terms are known to the Post Office Depart-

ment, and were understood by this company, in the verbal explanation had at the department prior to the sailing of the steamer of the 28th March, to be substantially the same as those agreed upon for the 5th and 20th.

I am, very respectfully, your obedient servant,

M. O. ROBERTS.

Hon. WM. V. BRADY, *Postmaster, &c.*

UNITED STATES MAIL STEAMSHIP COMPANY,
New York, April 27, 1853.

DEAR SIR: I intended saying to you in the letter accompanying this, in relation to the mails, that owing to the unavoidable detention of the Crescent City at her dry-dock, that steamer will not sail until Saturday next, at 2 p. m. This detention, however, will not prevent her from making the connexion with the weekly steamer from Panama, nor delay sending forward the mails as usual.

Very respectfully, your obedient servant,

M. O. ROBERTS.

Hon. WM. V. BRADY, *Postmaster, &c.*

UNITED STATES MAIL STEAMSHIP COMPANY,
New York, April 30, 1853.

SIR: We shall send our cart for the mails to be sent by the Crescent City to-day, and will carry them upon the same terms and conditions as were those of the 28th March and 13th instant. We do this to accommodate the public, and to prevent disappointment on their part, until we can communicate further with the department.

Very respectfully, yours, &c.,

M. O. ROBERTS.

Hon. WM. V. BRADY, *Postmaster, &c.*

POST OFFICE DEPARTMENT, *April 29, 1853.*

SIR: Your respective letters of the 25th and 27th instant to the postmaster at New York, in reference to mail by the intermediate line of steamers for San Francisco, has been transmitted by him to this office.

You remark that the terms on which you are willing to convey mail by the intermediate line of steamers to San Francisco "are known to the Post Office Department, and were understood by this [your] company, in the verbal explanations had at the department prior to the

sailing of the steamer of the 25th March, to be substantially the same as those agreed upon for the 5th and 20th."

That there may be no misunderstanding in this matter, I embrace occasion to say that the position of the department on this subject is precisely this:

1st. I do not ask nor require you to carry any mail by the intermediate semi-monthly steamers which you propose to run on your line; but as you have, it appears, thought it for your interest, independently of the mails, to put on these additional steamers, I have considered it my duty to offer you the mail on the conditions mentioned in my letter to Mr. Law of the 25th ultimo.

2d. In thus offering you the mail, it must be distinctly understood that this department neither consents to incur any increased expense in the matter, nor agrees, either directly or impliedly, in recognizing, in any manner, any claim for extra compensation for any service your company may perform under the order of the 25th, modified by the further order of the 29th ultimo.

The Pacific Mail Steamship Company have agreed unconditionally to these terms.

I am, sir, very respectfully, your obedient servant,

JAMES CAMPBELL,
Postmaster General.

M. O. ROBERTS, Esq.,
Agent U. S. Mail Steamship Company, N. Y.

POST OFFICE, NEW YORK,
May 7, 1853.

The "El Dorado" is advertised as the intermediate steamer for the 13th May instant.

Will you please advise me whether I shall make up and send by her a mail, under the correspondence that has already passed between this office and the contractors on that route; or is it advisable that the same course should be adopted with regard to the proposed mail per "El Dorado," as in the case of the intermediate steamers of the 13th and 28th April, and the 28th March?

An early answer will oblige your obedient servant,

ISAAC V. FOWLER, *Postmaster.*
Per G. W. JENKINS, *Secretary.*

Hon. JAMES CAMPBELL,
Postmaster General, Washington, D. C.

POST OFFICE DEPARTMENT,
May 9, 1853.

SIR. In answer to your letter of the 7th instant, I have to say that the contractors on the New York and Aspinwall line have been given to understand distinctly on what terms the mail for the intermediate

steamers will be offered to them for conveyance, and, if they take it, it will be of course only on these terms. You will continue to make up and have the mail in readiness for the contractors should they call for it.

I am, sir, very respectfully, your obedient servant,
JAMES CAMPBELL,
Postmaster General.

ISAAC V. FOWLER, Esq.,
Postmaster, New York.

PACIFIC MAIL STEAMSHIP COMPANY,
New York, April 11, 1853.

SIR: In answer to your letter of this date, addressed to "Howland & Aspinwall," I am instructed to advise you that this company will take from Panama any mails which you may despatch in the *El Dorado* on the 13th instant, on the conditions named in letters received by it from the Post Office Department up to this date.

Very respectfully, your obedient servant,
WM. H. DAVIDGE, Secretary.

WILLIAM V. BRADY, Esq., Postmaster.

POST OFFICE, NEW YORK,
April 23, 1853.

GENTLEMEN: In the event of a mail for California being sent from this office per "*Crescent City*" on the 28th instant, will you please advise me whether the mails will be forwarded by your steamers on the Pacific upon the same terms and conditions as were those by the steamers from this port on the 28th March ultimo, and 13th April instant.

WM. V. BRADY, Postmaster,
Per G. W. JENKINS, Secretary.

Messrs. HOWLAND & ASPINWALL,
Agents Mail Steamship Company.

PACIFIC MAIL STEAMSHIP COMPANY,
New York, April 25, 1853.

SIR: In answer to your communication of the 23d instant, I have to inform you that the mails you may forward by the *Crescent City* on the 28th instant will be taken from Panama on the same conditions as those forwarded by you on the 13th instant.

Respectfully, your obedient servant,
WM. H. ASPINWALL, President.

Hon. W. V. BRADY,
Postmaster, New York.

UNITED STATES MAIL STEAMSHIP COMPANY,
New York, June 4, 1853.

SIR: I have the honor to inform the department that on and after the 13th instant the intermediate steamers of this company, by which a through mail line has been run weekly between this city and San Francisco, will be discontinued.

It has been ascertained, by practical experiment, that a weekly line to and from California can be run only at a considerable loss, unless aided by additional compensation for mail service; nor is it by any means certain that even with proportionate compensation for that service it could be continued without loss.

I have the honor to be, very respectfully, your obedient servant,
M. O. ROBERTS.

Hon. JAMES CAMPBELL,
Postmaster General.

POST OFFICE DEPARTMENT, *June 8, 1853.*

SIR: I am this morning in receipt of your letter of the 4th instant, informing me that the intermediate steamers of your company, by which a through mail line has been run weekly between New York and San Francisco, will be discontinued on and after the 13th instant.

I am, sir, very respectfully, your obedient servant,
JAMES CAMPBELL,
Postmaster General.

M. O. ROBERTS, Esq.,
Agent United States Mail Steamship Company, New York.

UNITED STATES MAIL STEAMSHIP COMPANY,
New York, August 8, 1854.

SIR: In accordance with the understanding had between this company (as assignees of A. G. Sloo) and the department in the month of June, 1852, when the present arrangement for transporting the mails on the route between New York, Havana, New Orleans, and Chagres was made, which understanding was that the arrangement might be discontinued upon either party giving to the other thirty days' notice thereof, and the route named in the contract be resumed, (for the particulars of which arrangement I beg to refer you to the letter of the department of June 18, 1852, to George Law, esq., and to Mr. Edwin Croswell's reply thereto of the 23d of the same month,) I beg leave respectfully to inform the department that that part of the arrangement referred to by which a semi-monthly mail, *direct* between New Orleans and Aspinwall, has been carried for the past two years will be discontinued, commencing with the departure from New

Orleans of the 20th of September proximo, and the California mails to and from New Orleans will thereafter be carried via Havana. The dates of sailing of the steamers running between New York, Havana, and New Orleans will be changed, so as to make the necessary connexions at Havana.

I give you below a schedule of the departures, together with the probable dates of arrival. The latter can only be approximately given, as they depend both upon the weather and the time of the arrival of the California mails at Aspinwall, viz :

Leave New York for Havana and New Orleans on the 2d and 17th of each month.

Leave New Orleans for Havana and New York (with the California mails) on the 5th and 20th of each month.

Both the above will arrive and meet at Havana on or about the 8th and 23d of each month, and there transfer to a third steamer, to sail thence immediately for Aspinwall, such California mails and passengers as they may have on board. The steamer leaving Havana for Aspinwall may be expected to arrive at the latter port about the 13th and 28th of each month ; and in returning will leave Aspinwall as soon as the California mails for New Orleans are on board, and arrive back at Havana by or before the 8th and 23d of each month, or in time to connect with and transfer to the steamers leaving Havana on the dates named the mails and passengers for New Orleans.

This arrangement will enable the New Orleans mails to arrive at and depart from Aspinwall simultaneously with those of New York, and the mails bound into New Orleans will generally reach there about the 11th and 26th of each month.

The direct line of steamers between New York and Aspinwall, sailing from here on the 5th and 20th of each month, will for the present be continued as heretofore.

I have notified the company's agent in New Orleans of the proposed change, and have requested him to inform the postmaster there of it.

I have the honor to be, very respectfully, your most obedient servant.

M. O. ROBERTS, *President.*

HON. JAMES CAMPBELL,

Postmaster General, Washington.

POST OFFICE DEPARTMENT,
September 4, 1854.

SIR: Your letter of the 8th ult. was duly received, giving notice of the intention of your company to discontinue, from and after the 20th instant, the present *direct* line between "New Orleans and Aspinwall," which was provided for in the order of 31st May, 1852; and that the California mails to and from New Orleans will thereafter be conveyed *via* Havana.

The schedule on the "New York, Havana and New Orleans line" has accordingly been changed as proposed by you, so as to leave New York on the 2d and 17th, instead of the 12th and 27th of each month,

and New Orleans on the 5th and 20th, instead of the 11th and 26th of each month, the steamers from each direction to meet at Havana on the 8th and 23d of each month.

The following schedule has also been ordered for the *direct* line between Havana and Aspinwall, viz :

Leave Havana on the 8th and 23d of each month after arrival of steamers from New York and New Orleans.

Arrive at Aspinwall on or about the 13th and 28th of each month.

Leave Aspinwall on arrival of the Pacific mails for New Orleans, &c.

Arrive at Havana on or before the 8th and 23d of each month, in time to connect with the steamers for New Orleans and New York.

Your proposition is understood to be that the present semi-monthly lines between "New York and Aspinwall *direct*," and between "New York and New Orleans, *via Havana*," will both be continued as heretofore, the only change being to substitute a direct, semi-monthly line, between Havana and Aspinwall, for the present line between New Orleans and Aspinwall *direct*.

I regret deeply that your company contemplates making any change whatever in the present arrangement, and especially that the direct semi-monthly line between New Orleans and Aspinwall is to be abandoned.

I am, very respectfully, your obedient servant,

JAMES CAMPBELL.

MARSHALL O. ROBERTS, Esq.,

President of U. S. Mail Steamship Company, New York.

UNITED STATES MAIL STEAMSHIP COMPANY,
New York, September 7, 1854.

SIR: I have the honor to acknowledge the receipt of your letter of the 4th instant, recognizing and approving the schedule of running the ships of this company between New York, Havana, and New Orleans, and between Havana and Aspinwall, as advised in my letter of the 8th ultimo. The change, as you suppose, consists solely in the substitution of the line between Havana and Aspinwall for the direct line between New Orleans and Aspinwall; being a return to the original schedule in precise accordance with the terms and conditions of the existing contract.

I cannot but participate in your regrets that the company have felt compelled to withdraw the direct line between New Orleans and Aspinwall. That line was established, and the large additional service, beyond the requirements of the contract with the government, undertaken from a desire to afford all the facilities in our power to the western and southwestern States, not only for a direct intercourse with California, but for the transmission of the mails to and from that section of the Union.

The experiment has been fairly made during a period of more than two years, and has resulted in a monthly loss to the company, and will eventuate in a very large aggregate loss, unless Congress shall

direct that a reasonable compensation be paid for the extra mail service which, under the circumstances, we have not hesitated to perform, and which we regret to withhold, but which we do not feel justified in continuing at a large pecuniary sacrifice to the company.

By a computation made from the company's books, the losses incurred by running the direct line between New Orleans and Aspinwall, during the single year ending the 30th of June last, amount to an aggregate of more than one hundred and five thousand dollars, exclusive of insurance and wear and tear. If these last two items be added to the actual running losses, the aggregate would reach nearly two hundred thousand dollars.

The department will readily perceive that the very great sacrifice of money necessary to keep up that line has rendered its withdrawal almost, if not quite, an imperative necessity. Nevertheless, if the department desires its continuance, I think that perhaps an arrangement may be effected with the Nicaragua Transit Company, by which half the service might be performed by one of their steamers and the other half continue to be performed by one of this company's ships, and the losses be thus divided. At any rate, if the suggestion meets the approval of the department, I will, at your request, endeavor to make such an arrangement.

I have the pleasure to inform the department that this company have just completed the purchase of the splendid steamship "North Star," of Commodore Vanderbilt, at a cost of \$400,000, and that she will sail to Aspinwall with the California mails on the 20th instant.

I am, sir, very respectfully, your most obedient servant,

M. O. ROBERTS, *President.*

Hon. JAMES CAMPBELL,

Postmaster General, Washington.

No. 5.

The additional mail service alluded to in the succeeding paper has been performed upon—

- I. The direct route between New York and Chagres or Aspinwall.
- II. The direct route between New Orleans and Chagres.
- III. The intermediate or *weekly* line between New York and California, and between New Orleans and California.

I.—The direct service between New York and Chagres.

The contract required the transportation of the United States mail from New York to New Orleans twice a month, and back, touching at Charleston, (if practicable,) Savannah, and Havana; and from Havana to Chagres, twice a month and back. When this route was created by act of Congress, in 1847, the Havana and Chagres branch of it was considered secondary and of the least comparative consideration. But the rapidly increasing business and intercourse with Cali-

foria in 1851-'2 called for enlarged facilities of transportation and communication. The direct line between New York and Chagres, by which two days, if not three, had been saved in time, had been established in the spring of 1851, and was in operation. The California mails, carried by the contract route, were necessarily behind the running time of the direct steamers. This was cause of much complaint. It was material to the business of the country and to the department that they should be carried by the direct route. The company could not withdraw their contract route via Havana, which they would gladly have done, and carry the mails by the direct route only. They were compelled to keep up the Havana route, and if the California mails were sent by the direct route, to perform so much additional mail service. This additional service, therefore, was demanded by every public consideration. Both on the Atlantic and Pacific sides, the desire for the speediest transmission of the mail was universal. All this was well known to the department. And yet, because the direct route had been established, and because the company's desire to meet the public wishes and expectations was well known, the department did not hesitate to place itself upon the ground that the company should perform the additional service, not only without holding the department liable, but should be made to commit themselves not to go to Congress for such compensation therefor as that body should deem reasonable and equitable. When the company declined to stultify themselves by a committal to the latter position, and refused to carry the mails on terms which they considered incompatible with justice, and a fair reward for additional mail service on their part, then the department insisted that it would not *sanction* or *join in* any application by the company for any allowance from the treasury or *elsewhere*, meaning Congress. Now the company have never asked the sanction or co-operation of the department in this application. They neither requested nor expected it. On the contrary, the department having uniformly avoided an acknowledgment that anything should be paid or any obligation recognized by it for a service that contributed largely to the interests of the department and to the public interests, whatever might be the additional labor and cost to the contractors, the company had no reason to expect anything but opposition from the department to their claim for a fair and reasonable allowance by Congress. In this they have not been mistaken. The letter of the Postmaster General to the chairman of the Post Office Committee of the Senate is a labored statement or argument, accompanied by a mass of correspondence, (much of it non-essential to the question before the committee,) intended, by giving a construction to such correspondence, in more than one instance, not borne out by its tenor, to confirm the allegation of the letter, that "neither the department nor the government has been justly subjected to any claim for additional compensation, on account of the extra mails which have been transported by the contractors, such additional mails having in all instances been conveyed with a distinct understanding that no additional expense should thereby be incurred *by the department.*"

It will be observed that the first letter in the series of correspond-

ence, and to which the Postmaster General calls the particular attention of the committee, was that of Postmaster General Hall, enclosing a letter from a New York merchant, complaining that the California mails were not sent by the *direct* line between New York and Chagres. This letter of the Postmaster General was dated June 23, 1851. Mr. Law replied on the 25th of the same month, saying that no blame could attach to the company for the mails not being sent by that route; that the commanders of the direct ships had offered to receive them on board at Chagres, and that the mail agent, not being instructed by the department, had declined the offer; but that, "if the department desired it, he (Mr. Law) would be happy to instruct the commanders of the ships to receive the mails on board." Nothing was said by Mr. Law in this letter about compensation. Probably it was not thought of at the moment; or, if it had been, would have been considered premature or unnecessary, as no doubt was then entertained that the department would treat the matter with fairness, if not with liberality. And yet this circumstance of not starting off with a claim for additional compensation is alluded to in the letter of the Postmaster General to the committee, and their particular attention is called to it, as if it proved the fact that the idea of compensation in any form was an after-thought. But all allusion by the Postmaster General to another circumstance connected with this beginning of the correspondence, and a material part of it, is *carefully avoided*. The first letter of Postmaster General Hall made no allusion to compensation. It would therefore have been thought by the department to manifest undue eagerness on that subject by the company had Mr. Law obtruded it in his first letter in reply. But the first moment it was alluded to by the department—*five days afterwards*—Mr. Law replied, and assumed the position on which the mails were first sent by the direct line, which has been uniformly maintained, and on which the additional service for which compensation is now solicited from Congress has been performed, namely, that the company did not hold the department liable, nor expect its co-operation in any application to Congress for it; but that they "were entirely willing to perform the additional mail service, in the confident expectation that a sense of justice would induce Congress to make such further provision as might be considered a suitable compensation for it." The Postmaster General's first letter was dated June 23, Mr. Law's reply the 25th of the same month; the rejoinder of the Postmaster General on the 1st July, and Mr. Law's answer the 21st of the same month; so that the whole question of compensation was fully stated on both sides within twenty-nine days after the first letter from the department in relation to the additional service, and within twenty days after the first allusion to the subject by Postmaster General Hall. With all deference, it is conceived that an effort to draw in the aid of so small a point against the claim is significant of the feebleness of the attempt to defeat it before the committee and before Congress.

The Postmaster General urges that the contractors were already running the direct line of steamers between New York and Chagres, "in order to accommodate themselves; that those steamers were placed upon the route without the previous knowledge of the department,

and without any reference to the mail service." It is true that the direct line, by which two days in time were saved, was not established for the sole or particular purpose of carrying the mails. Nor were the railroads throughout the country, or the Panama railroad, constructed for that purpose. But, being in operation, a wise appreciation of the advantages of speed in the transportation of the mails has induced the government to avail itself of them. It was material to the public interests that the through California mail should be carried by the direct route, while the contract required that the Havana route should be kept up. And no valid or good reason can be assigned why a just compensation should not be paid for the additional service performed in consequence of this state of things.

II.—*The direct service between New Orleans and Chagres.*

The next stage in the correspondence in relation to additional compensation was in the summer of 1852, at the commencement of the direct line between New Orleans and Chagres, or Aspinwall. Until that time the intercourse with California by mail, for all the west and the valley of the Mississippi, was by the contract route *via* New Orleans and Havana, and thence to Chagres. To afford greater facilities to travel and the mails from all that region the direct line between New Orleans and Chagres was undertaken. It was much desired there, and entered upon under that impression. But it was an experiment. The company were willing to make it, but, of course, relied upon a reasonable allowance for the increased mail service. It proved, after being thoroughly tested, a severe loss to the company, not less a sum than \$200,000, and was discontinued. But the same effort was made in the outset to bring the company, as they then interpreted the views of the department, to an admission that would preclude them, if not from asking, at least from obtaining compensation even from Congress. The first letter from the department was from Mr. Hall, on the 4th May, 1852. The reply to this letter, by the joint letter of Mr. Aspinwall and Mr. Law, of the 25th May, placed the question of compensation distinctly on the letter of Mr. Law of the 21st June, 1851, viz: that the additional service would be performed by the company "in the confident expectation that a sense of justice would induce Congress to make such further provision as might be considered a suitable compensation for it." On the 31st May the Postmaster General (Hall) replied to the joint letter, and said: "In giving my assent to this arrangement, I in no way *consent* to any increased expense in the matter, either by a direct allowance from the treasury or by *favoring* any application which may be made elsewhere for increased compensation." On the 1st and 2d June, 1852, the Postmaster General and Secretary of the Navy addressed the company, repeating the phrase that the service must be performed "with a distinct understanding that no allowance from the treasury, on any application which hereafter may be made elsewhere for increased compensation, will receive *the sanction* of these departments." This was interpreted by the company to mean that they should preclude themselves from going to Congress for reasonable compensation; and accordingly Mr. Law replied on the 8th

June, and said: "*Upon the terms and conditions presented in the letters from the Post Office and Navy Departments of the 1st and 2d instants, I do not consider it compatible with the interests of the company to carry out the proposed arrangement for increased mail service between this port and California.*" As this is a material letter, which has escaped all allusion in the Postmaster General's letter, it is inserted entire:

"UNITED STATES MAIL STEAMSHIP COMPANY,
"New York, June 8, 1852.

"SIR: I have the honor to acknowledge the receipt of your dispatch of 1st instant.

"*Upon the terms and conditions presented in the letters from the Post Office and Navy Departments of the 1st and 2d inst., I do not consider it compatible with the interest of this company to carry out the proposed arrangement for increased mail service between this port and California.* This company is prepared, agreeably to our letter of the 21st July, 1851, to carry the mail between New York and Aspinwall, discontinuing the line between Havana and Chagres, and run the line direct between New York and New Orleans, touching at Havana, twice a month, and leave to Congress the compensation for the increased service over the amount paid under the existing contract; the company retaining the right to discontinue such increased service upon giving the department one month's notice, and to resume the service as now performed, according to the requirements of the contract, viz: twice each month between New York, New Orleans, Havana, and Aspinwall. This is the only portion of the joint letter of the 25th May last in which this company was interested, and to which its assent was given.

"I have the honor to be, &c.,

"GEO. LAW, *President.*"

Hon. N. K. HALL, *Postmaster General.*

Two days subsequently, (on the 10th June,) Mr. Law addressed to the Secretary of the Navy a reply to his letter of the 2d June, in precisely the language of the above letter to the Postmaster General. On the 15th June, in reply to a further letter from the Post Office Department, of the 10th June, Mr. Law wrote the department as follows:

"U. S. MAIL STEAMSHIP COMPANY,
"New York, June 15, 1852.

"SIR: I have the honor to acknowledge the receipt of your letter of the 10th instant.

"The impression of the department that this company declines to carry out the proposition for such increased service as shall be required for direct mails between New York and Aspinwall, and New York and New Orleans via Havana, each twice a month, 'on the ground that the Secretary of the Navy and the Postmaster General will not hold themselves liable, either directly or indirectly, for any additional

expense in the matter,' is not, as the case is understood by the company, the actual attitude in which the matter stands.

"In my letter to the department of the 21st of July, 1851, *embodying this proposition*, it was alluded to as an experiment, intended to meet the public wants, and a general demand for increased mail facilities between the Atlantic and Pacific portions of the United States, beyond the stipulations of the existing contract; which being voluntary on our part, and requiring the employment of several additional steamers, we claimed the right, should it prove too onerous and expensive to the company, to discontinue, and to return to the existing schedule, upon giving the department one month's notice. In relation to compensation, I said, 'still desirous of promoting to the utmost the interests and convenience of the public, we are entirely willing to perform the additional service, *in the confident expectation that a sense of justice will induce Congress to make such further provision as may be considered a suitable compensation for it.*'

"This was the basis of the recent renewal of the proposition in the joint letter of the 25th May last. But the tenor of the letters of the Secretary of the Navy and the Postmaster General, of the 1st and 2d instant, seems to admit of an interpretation beyond a determination not to hold themselves *liable*, directly or indirectly, for any additional expense. It seems to preclude the idea of any application hereafter on the part of this company to Congress for any additional compensation, whatever may be the additional performance of mail service, and to be a distinct negative, by the departments, to which we become parties, upon anything additional that Congress may deem it just and expedient to allow. It seems also to preclude the right on the part of the company to go back to the schedule under the contract.

"While it has not been the intention of this company to hold either of the departments *liable, directly or indirectly, for any additional mail service beyond the conditions of the contract—but to perform it, subject entirely to the decision of Congress*—I desire respectfully to say that I do not feel authorized to place the company in a position that would preclude it from applying for or accepting such additional allowance as in the judgment of Congress might be considered equitable.

"By the terms of the contract, for running between New York and New Orleans, Havana and Chagres, twice each month, we stipulate to employ five steamships in the performance of the mail service, two of them being spare ships. The proposed service will require six steamers in constant service, and three spare ships. We were entirely willing to make the trial, and to continue the service, if it should prove as advantageous to the public as was supposed, and the business of the company would justify the increased expenditure to which it would be subjected; but if it should not, or Congress should not regard it of sufficient importance to pay such compensation as would enable the company to perform the additional service without loss, the company reserved the right to return to the former schedule, viz: twice a month between New York and New Orleans, and twice a month between Havana and Aspinwall. In such case it was also the intention to give the Postmaster General due notice—one month being thought sufficient for that purpose.

"Upon this basis the company is prepared to enter at once upon this arrangement; to carry it out to the best of its ability, and to contribute to the extent of its means to the mail facilities between New York and California.

"I have the honor to be, very respectfully, your obedient servant,
"GEORGE LAW, *President*.

"Hon. N. K. HALL, Esq.,
"Postmaster General."

The answer of Mr. Dundas, for Postmaster General Hall, addressed to Mr. Aspinwall on the 14th June, was as follows :

"POST OFFICE DEPARTMENT,
"June 14, 1852.

"SIR: Your letter of the 12th instant is received. In his letter of the 8th instant Mr. Law says: 'Upon the terms and conditions prescribed in the letters from the Post Office and Navy Departments of the 1st and 2d instant, I do not consider it compatible with the interest of this company to carry out the proposed arrangement,' &c.

"It is not perceived that the order, as made, differs from Mr. Law's proposition essentially in any respect, except it be in the fact that the Secretary of the Navy and the Postmaster General decline to be responsible, either directly or indirectly, for any additional expense in the matter; in other words, that they decline to join in submitting the subject to Congress hereafter upon a question of increased compensation to the company. If the matter must be submitted to Congress, would it not be advisable that it be done at once?

I am, respectfully, your obedient servant,

"WM. H. DUNDAS,
"For the Postmaster General.

"WM. H. ASPINWALL, Esq.,
"President Pacific M. S. S. Co.,
"New York, N. Y."

This letter was regarded by the company, as the department undoubtedly intended, as conceding the position of the company that the additional service would be performed "in the confident expectation that a sense of justice would induce Congress to make such further provision as would be considered a suitable compensation for it." So understanding it, the mails were received on board, and the service continued until the losses incurred compelled the company to withdraw the line. That such was the understanding is confirmed by the letter of Mr. King, the present First Assistant Postmaster General, who was in New York when the arrangement was in progress. He wrote Postmaster General Hall on the 24th June:

"I presume the matter now stands where the Postmaster General and Secretary of the Navy intended it should; that is, if the arrangement is carried out, there is to be no obligation on either to favor an application for increased allowance from any quarter. Messrs. Law, Roberts, and Croswell have just stated to me that this is their understanding of the matter, but if found to work well, they intend to bring

the subject before Congress themselves, and if allowed sufficient increased pay, they will continue the arrangement; and if not, they will return to the old schedule."

The attention of the committee is respectfully invited to the letter of Mr. Law of the 21st July, 1851, as follows:

" UNITED STATES MAIL STEAMSHIP COMPANY,
" *New York, July 21, 1851.*

" SIR: I have the honor to acknowledge the receipt of your letter of the 1st instant.

" It is the intention of this company at an early day, if it shall meet with the approbation of the department, to arrange the running of its steamers, each month, as follows, viz: Twice between New York and Chagres direct; twice between New York and New Orleans, via Havana; and twice between New Orleans and Chagres, direct, making three distinct routes, and six passages per month to and from the respective points of destination. Provision will be made for carrying the mails by each steamer, and to insure the arrival of the California mails at the city of New York and at New Orleans at the earliest day that their arrival at Chagres will enable them to be brought forward. We propose to make trial of this arrangement, and if it proves satisfactory, to continue it. So long as it is in operation the direct connexion between Havana and Chagres may be dispensed with, as the Charleston and Savannah mails may be sent via New Orleans.

" In expressing in my letter of the 28th ultimo the readiness of this company to instruct the commanders of their steamers, direct as well as by the way of Havana, to convey the California mails, if desired by the department, it was not my intention to preclude a claim for reasonable additional compensation for such service, although we desire to meet fully the requirements of the department. It is not expected, I presume, that the mails can be carried, outward and homeward, six times per month, with the necessary additional clerks or agents, for the same sum for which we contract to carry them twice monthly. Still, desirous of promoting to the utmost the interest and convenience of the public, *we are entirely willing to perform the additional service, in the confident expectation that a sense of justice will induce Congress to make such further provision as may be considered a suitable compensation for it.*

" I have the honor to be, very respectfully, your obedient servant,
" GEORGE LAW, *President.*

" HON. N. K. HALL, *Postmaster General.*"

The attention of the committee is invited to this letter, not only because it presents in the outset a position assumed and uniformly maintained by the company in relation to this question of additional compensation, but because the manner in which it is referred to by Postmaster General Campbell must leave the impression that it is at least palpably misapprehended by him. This remark is applicable to the scope and even the tenor of the language of material parts of the

letter. Take a single sentence as an illustration. The Postmaster General says: "He (Mr. Law) also stated that it was not his intention 'to preclude the company from making a claim for reasonable additional compensation for such service,' and *intimated* that such claim (if any) would be made *solely* on account of the '*additional clerks or agents*' which it would be necessary to employ in carrying the mails outward and homeward by the extra steamers." Mr. Law's language was as follows: "It is not expected, I presume, that the mails can be carried, outward and homeward, *six times per month*, with the necessary additional agents or clerks, for the same sum for which we contract to carry them *twice monthly*." The conveyance of the mail *six times* per month, instead of *twice*, was the material difference, the matter of additional clerks or agents being merely incidental. That it is anywhere intimated or stated by Mr. Law that the latter was the *sole* ground of the claim for reasonable compensation for this enlarged service, cannot be conceived for a moment by any one who will read the correspondence without prejudice, or understand the subject. If the Postmaster General could have supposed himself liable to fall into the error of conceiving that the multiplication and running of steamships and the transportation of mails are non-essential features in the case, and the merely incidental employment of agents or clerks the *sole* source of additional expense, he could have put his hands at once upon a corrective, in the letter of Mr. Law of the 15th June, 1852, then before him, in which he says: "By the terms of the contract for running between New York and New Orleans, Havana and Chagres, *twice a month*, we stipulated to employ *five* steamships in the performance of the mail service, two of them being spare ships. The proposed service will require *six* steamers in constant service, and *three* spare ships." It is obvious that it was *solely* on account of the employment of *six* instead of *five* steamships, and the cost of their running, that the claim for additional compensation was based, and certainly not upon the matter of a few additional clerks or agents. Although the carrying of the mails, and a natural belief that reasonable compensation might be obtained for it, was not the only consideration for the establishment of the direct line between New Orleans and Chagres, yet it entered of course into the inducement to make a hazardous experiment to afford enlarged and valuable facilities for the transmission of the California mails direct to and from the western portion of the Atlantic States.

While the particular attention of the committee is invited by Postmaster General Campbell to Mr. Law's letter to the department of the 25th June, 1851, not a single allusion is made to any other letter of the company, and particularly to those in 1851 and 1852, which refer to their determination to submit the whole matter of additional compensation to the justice of Congress; nor is the fact mentioned by the Postmaster General that such was, from the beginning, the basis of their position in relation to compensation for additional mail service. And the committee will look in vain for any acknowledgment in the Postmaster General's letter that that material position and determination, so prominently placed before the department by the company, and *on which the performance of the additional service*

hinged, was ever thought of or alluded to by the company. For some reason, the fact seems to be kept studiously out of sight. It is a curious and significant fact that in the enumeration of the "more important parts of the correspondence," to which the Postmaster General directs the attention of the committee, the material letter from the department to Mr. Aspinwall of the 14th June, 1852, on which the company consented to receive the mails on board the ships, after having declined them on the previous 8th of that month, is altogether omitted.

III.—*The intermediate or weekly line between New York and California and New Orleans and California.*

Early in 1853, the calls for increased communication between the Atlantic and Pacific portions of the Union became so frequent and urgent, especially from business men in California, that the two companies performing the California mail service resolved to make the experiment of running an intermediate semi-monthly through line direct between New York and San Francisco, and also between New Orleans and San Francisco. It was a hazardous experiment at the time. Considerations connected with the ordinary business of the ships in freight and passengers did not warrant the undertaking; and even with a liberal allowance for thus doubling the mail service, (carrying the mail *weekly* to and from California,) it was by no means certain that it could be sustained. It was commenced, however, and the mails, after much correspondence between the department, the postmaster at New York, and the company, preceding each voyage, were received on board. But the conditions imposed by Postmaster General Campbell, directly from the department and through the postmaster at New York, were so restrictive and unfavorable that the mails were taken at each voyage under a sort of protest, and with an intention on the part of the company of having a definite arrangement to carry them, as in the instance of the direct mail between New York and Aspinwall, and with an understanding that the question of compensation should be submitted to the decision of Congress, the department meanwhile assuming no liability, nor being expected to co operate in any application to Congress, or if such an understanding should be found impracticable, to decline to carry the mails by that line. But it soon became apparent that the intermediate or weekly line could not be sustained, even with the utmost that could be expected as compensation for the additional mail service, and that the line must soon be withdrawn. Accordingly the mails were carried on the conditions imposed by the department so long as the line was continued, as a convenience to the business interests, to which it proved highly advantageous, but to the company a serious loss; and notice of its withdrawal was given the Postmaster General by Mr. Roberts on the 4th June, 1853, having been in operation about one quarter. Under these circumstances, the company make no claim

upon the department or upon Congress for the additional mail service thus performed. It is proper to add that a large proportion of the correspondence, exceeding one third of the mass accompanying the letter of Postmaster General Campbell, relates exclusively to this branch of service, the consideration of which by the committee, and so much of the Postmaster General's letter as belongs to it, is rendered unnecessary.

The letter of Postmaster General Campbell opens with his view of the permission given the contractors to run their steamers direct between New York and Havana, "by which they were relieved from the necessity of stopping at the intermediate ports of Charleston and Savannah, without requiring from them any compensatory benefit in increased service on other portions of their route." All the first part of the correspondence accompanying the Postmaster General's letter, consists of letters on this subject between the department and the postmasters, and others at Charleston and Savannah; and it will be seen that the latter recommend the change. Besides, the Postmaster General says it "was granted with a view to *afford greater despatch to the through mails, and has served* a good public purpose in expediting those mails." These would seem to be good reasons for making the change, without supposing that "compensatory" service would also be expected from the contractors.

Points.

It will be seen from all the facts in relation to this claim for reasonable compensation for additional mail service,

1. That the additional service was commenced on the *direct* line from New York to Chagres and back, in the summer of 1851, and that the mails were received on board on the ground distinctly stated in Mr. Law's letter to the department of the 21st July, 1851, viz: that the company would perform the additional service "in the confident expectation that a sense of justice would induce Congress to make such further provision as might be considered a suitable compensation for it."

2. That in 1852, when the direct line was run between New Orleans and Chagres, these positions were renewed by the company, and when the department assumed an attitude that was at first understood to preclude the company from seeking compensation for the additional service from the justice of Congress, they declined the arrangement to carry the mails; but subsequently, under the explanatory letter from the department to Mr. Aspinwall, of the 14th June, 1853, which was understood to admit as a part of the arrangement the position of the company to submit the matter of additional compensation "entirely to the decision of Congress," without "any intention to hold the department liable, directly or indirectly," and without expecting it to "join in" any application to Congress for such compensation, the mails were received on board, and the arrangement continued until the line was withdrawn.

3. That for the intermediate, or weekly service, began in March,

1853, and terminated in June of the same year, to which the greater portion of the letter of the Postmaster General and the correspondence accompanying it refer, no additional compensation is claimed by the company.

4. *That all the additional mail service for which compensation is claimed has been actually performed, and has been so performed with the distinct understanding on the part of the company that the whole question of compensation therefor should be submitted to the judgment and justice of Congress.*

For the trustees under the contract, and for United States Mail Steamship Company,

EDWIN CROSWELL.

CORRESPONDENCE REFERRED TO.

I.—*The direct service between New York and Chagres.*

Letter from Postmaster General Hall to Mr. Law, June 23, 1851,
enclosing letter from New York merchant.

From Mr. Law to Postmaster General, June 25, 1851.

From Postmaster General to Mr. Law, July 1, 1851.

From Mr. Law to Postmaster General, July 21, 1851.

II.—*Direct service between New Orleans and Chagres.*

Letter from Postmaster General to Mr. Roberts, May 4, 1852.

From Mr. Aspinwall to Postmaster General, May 17, 1852.

From Postmaster General to Mr. Aspinwall, May 18, 1852.

Joint letter from Mr. Aspinwall and Mr. Law to Postmaster General, May 25.

Postmaster General to Mr. Aspinwall, May 31, 1852.

Postmaster General to Mr. Law, June 1, 1852.

Secretary of the Navy to Mr. Law, June 2, 1852.

Postmaster General to Mr. Law, June 3, 1852.

Mr. Law to Postmaster General, June 8, 1852.

Mr. Law to Secretary of the Navy, June 10, 1852.

Postmaster General to Mr. Aspinwall, June 14, 1852.

Mr. Law to Postmaster General, June 15, 1852.

Mr. Law to Postmaster General, June 16, 1852.

Postmaster General to Mr. Brady, June 16, 1852.

Postmaster General to Mr. Law, June 18, 1852.

Postmaster General to Secretary of the Navy, June 18, 1852.

Postmaster General to Mr. Aspinwall, June 18, 1852.

Mr. Law to Postmaster General, June 21, 1852.

Mr. Croswell to Postmaster General, June 23, 1852.

Postmaster General to Mr. Brady, June 22, 1852.

Postmaster General to Mr. Law, June 24, 1852.

Mr. Law to Postmaster General, June 24, 1852.

Mr. King to Postmaster General, June 24, 1852.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1857.—Submitted and ordered to be printed.

Mr. BENJAMIN submitted the following

REPORT.

The Committee on Private Land Claims, to whom was referred the petition of Royal Phelps, attorney in fact of James, Earl of Selkirk, praying a patent may be issued for certain lands granted to his father by the Hudson's Bay Company, have had the same under consideration, and submit the following report:

The petitioner claims a large district of country south of the 49th parallel and included in Minnesota Territory, by virtue of a grant from the Hudson's Bay Company in 1811, to whom Charles II, in 1669, gave a charter for all the lands watered by the streams flowing into Hudson's bay.

The petitioner therefore claims under an English grant, and the question for consideration is, whether the territory claimed was within the jurisdiction of Great Britain? The United States claim the territory of Louisiana under purchase from France by the treaty of 1803, with the same extent of territory "that it now has in the hands of Spain, and that it had when France possessed it, and such as it should be after the treaties subsequently entered into between Spain and other States."

On the 14th of February, 1804, Mr. Madison, then Secretary of State, in a communication to Mr. Monroe, then our minister at the court of St. James, makes use of the following language in reference to the northern boundary of Louisiana:

"There is reason to believe that the boundary between Louisiana and the British territories north of it was actually fixed by commissioners appointed under the treaty of Utrecht, and this boundary was to run from the Lake of the Woods westwardly in latitude 49°. * * Annexed is a paper stating the authority on which the decision of the commissioners under the treaty of Utrecht rests, and the reasoning opposed to the construction making the 49th degree of latitude the northern boundary of Louisiana, with marginal notes in support of that construction."—(Am. St. Pap., vol. 3, p. 90.)

On the 5th of September, 1804, Mr. Monroe delivered a paper to Lord Harrowby, of which the following is an extract: (American State Papers, vol. 3, page 97.)

"By the tenth article of the treaty of Utrecht, it is argued 'that

France shall restore to Great Britain the bay and straits of Hudson, together with all the lands, seas, seacoasts, rivers, and places situate on the said bay and straits which belong thereunto,' &c.

"It is also agreed 'that commissaries shall be forthwith appointed by each power to determine, within a year, the limits between the said bay of Hudson and the places appertaining to the French; and also to describe and settle, in like manner, the boundaries between the other British and French colonies in those parts.'

"Commissaries were accordingly appointed by each power, who executed the stipulations of the treaty in establishing the boundaries proposed by it. They fixed the northern boundary of Canada and Louisiana by a line beginning on the Atlantic, at a cape or promontory, in $58^{\circ} 30''$ north latitude; thence southwestwardly to the Lake Mistasin; thence further southwest, to the latitude 49° north from the equator, and along that line indefinitely. * * * By Mitchell's map, by which the treaty of 1783 was formed, it was evident that the northwestern point of the Lake of the Woods was at least as high north as the latitude 49° .

"By the observation of Mr. Thompson, astronomer to the Northwestern Company, it appears to be in latitude $49^{\circ} 37''$. By joining, then, the western boundary of Canada to its northern, in the Lake of the Woods, and closing both there, it follows that it was the obvious attention of the ministers who negotiated the treaty, and of their respective governments, that the United States should possess all the territory lying between the lakes and the Mississippi south of the parallel of the 49° of north latitude. This is confirmed by the courses which are afterwards pursued by the treaty, since they are precisely those which had been established between Great Britain and France in former treaties. By running due west from the northwestern point of the Lake of the Woods to the Mississippi, it must have been intended, according to the lights before them, to take the parallel of the 49° of latitude, as established under the treaty of Utrecht; and by pursuing thence the course of the Mississippi to the 31° of latitude the whole extent of the western boundary of the United States."

In 1807 a treaty was formed by the commissioners of their respective governments, which, however, was never confirmed, in which the boundary was established as follows: (*American State Papers*, vol. 3, page 165.)

"Article 5. It is agreed that a line drawn due north or south (as the case may require,) from the northwestern point of the Lake of the Woods, until it shall intersect the 49th parallel of north latitude, and from the point of such intersection, due west, along and with the said parallel, shall be the dividing line," &c.

The commissioners at the Treaty of Ghent, in 1814, had at one time agreed to an article fixing the boundary to the west of the Lake of the Woods at the 49th parallel, but, by the consent of both parties, the article was omitted, and the question of boundary, although discussed, was entirely excluded from the treaty.

Thus rested this boundary question until the treaty of 1818, by the second article of which "It is agreed that a line drawn from the most

northwestern point of the Lake of the Woods, along the forty-ninth parallel of north latitude, or, if the said point shall not be in the forty-ninth parallel of north latitude, then, that a line drawn from said point due north or south, as the case may be, until the said line shall intersect the said parallel of north latitude, and from the point of such intersection, due west, along and with the said parallel," &c.—(U. S. S., vol. 8, p. 249.)

There is no reservation of any private rights by the said treaty; therefore, all private rights depend alone upon the law of nations for protection.

The question of boundary being a political question, which has been definitely settled by the political department for a period of nearly forty years, and that, too, in accordance with the declaration of Mr. Monroe made to the British minister more than half a century ago, it is too late to reopen the controversy, and the petitioner must be foreclosed by the action of his own government in 1807, 1814, and 1818.

After a careful consideration of the above facts and the law applicable thereto the committee are of opinion that the petitioner has no legal right nor equitable claim to the lands in question. They therefore report a recommendation that the prayer of the petitioner be refused.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1857.—Ordered to be printed.

Mr. YULEE made the following

REPORT.

[To accompany bill S. 646.]

The Committee of Claims, to whom was referred the memorial of Daniel Kehr, report:

The memorialist represents that he is an heir and representative of John D. Kehr, an ensign in the 22d regiment of United States infantry, who was killed in the battle of Niagara on the 25th July, 1814. It appears, from a statement of the Third Auditor, that according to the books of his office, the accounts of Ensign Kehr show an indebtedness to the government of \$374. It is suggested that the absence of the necessary vouchers to meet this balance is owing to the sudden death of Ensign Kehr upon the field of battle, and the consequent loss of his papers and memoranda of payments or disbursements made by him, his trunk and personal effects, except his horse, not having been recovered by his family.

It is asked that, under the circumstances, the balance upon the books of the treasury may be remitted.

In the case of Captain W. G. Williams, who was killed in the battle of Monterey, the Senate passed a bill allowing a credit to settle a balance in his accounts of a similar character.—(See Sen. Rep., 1st sess. 32d Cong., No. 128.)

Without reference to other precedents, the committee are of opinion that the charge existing upon the books of the treasury against Captain Kerr should be remitted. It is understood that he was an officer of good conduct, and usually correct and accurate in his accounts. The fact that a meritorious officer has sealed his fidelity to his country by the sacrifice of his life on the battle-field, may properly permit such presumptions in his favor as may justify the remission of a pecuniary charge against him, of which it is likely, from his previous history, he would have relieved himself had he lived.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1857.—Submitted and ordered to be printed.

Mr. GREEN made the following

REPORT.

The Committee on Pensions, to whom was referred the petition of Margaret McClure, widow of John, who claims a pension for services alleged to have been rendered in the revolutionary war, beg leave to report :

That there is not a single witness who saw him in the service, nor is there any record evidence in support of the claim. One witness says he is "as sure that he was in the service of the United States as he could be of anything he did not see," but does not detail any circumstances corroborating that statement. One other witness speaks of having heard his discharges read, but does not give their contents. The certificate from the auditor general of Pennsylvania is not applicable to this case, for, in the first place, it shows a service after the claimant, by his own story, had ceased to serve, and, besides, that the documents are on file in the Pension Office showing that John McClure, of the Pennsylvania line, was a sergeant enlisted for the war, and that he received his bounty land as such November 5, 1789. Your committee, therefore, unanimously recommend the adoption of the following resolution :

Resolved, That the prayer of the petitioner be rejected.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1857.—Submitted and ordered to be printed.

Mr. FISH made the following

REPORT.

The Committee on Foreign Relations, to whom was referred the petition of J. C. Tucker, late commercial agent of the United States for Comayagua and Tegucigalpa in Honduras, praying reimbursement of the amount lost and expended by him in his late unsuccessful attempt to enter upon the duties of that office, have had the same under consideration and now report :

The petitioner sets forth in his petition that, on the 22d February, 1856, he was appointed and duly commissioned as United States commercial agent to the republic of Honduras. That he immediately left for that destination via Nicaragua, in which country he was delayed by sickness, during which he was robbed of \$500 and the mules purchased for the land travel. That while travelling across the border and through Honduras he was subjected to much expense, extortion, and delay in his progress to the capital, which he finally reached after a difficult journey of eight hundred miles. That on presenting his credentials he was rejected, on the plea that the authorities there were unacquainted with either the signature of Mr. Marcy or the seal of the United States, and thereupon he returned to the United States.

In support of his petition, Mr. Tucker refers to the correspondence between himself and the Department of State, in which the same facts are more fully detailed, together with a translation of the letter of the Honduran minister, declining to receive him as United States commercial agent to that republic.

The petitioner further states that the expenses actually incurred by him amount to the sum of \$954, which, together with the \$500 stolen from him, and a remuneration for his services, he prays may be now allowed to him.

From a letter of the Secretary of State, to whom the petition and accompanying papers were referred, for such information touching this case as the department might afford, it appears that Mr. Tucker had previously been in Honduras, had business concerns there, and wished to go back with the appointment of commercial agent, partly, if not mainly, for the prosecution of his private business. That on his return to that country, although much alarm had been excited in regard to Americans by what had occurred in Nicaragua, he did not do what he

ought to have done to allay apprehensions, and even on some occasions, as he admitted to the Secretary, refused to show his passport.

Further, it seems evident from the letter of the Honduran minister that the refusal to recognize Mr. Tucker in his official character was not absolute, but merely suspended on account of a difficulty which might easily have been removed by communicating with the United States consul at Omoa. But this he declined doing, and abruptly left the country on his return to the United States.

Upon a full view of all the circumstances the committee are of opinion that the petitioner is not entitled to the relief asked for, and they therefore recommend that the claim be rejected.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1857.—Submitted and ordered to be printed.

Mr. DURKEE made the following

REPORT.

The Committee on Revolutionary Claims, to whom was referred the petition of Joseph Holman, praying to be allowed bounty land for military services during the war of the revolution, report:

That on examination of this claim they find that it has been adjusted by the Commissioner of the Pension Office. They therefore ask to be discharged from the further consideration of said petition.

IN THE SENATE OF THE UNITED STATES.

March 3, 1857.—Ordered to be printed.

Mr. RUSK made the following

REPORT.

The Committee on Indian Affairs, to whom was referred the memorial of David Gordon, in behalf of himself and others, beg leave to report :

That in the year 1848 Congress passed the following act :

AN ACT for the relief of the legal representatives of George Fisher, deceased.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Second Auditor of the Treasury of the United States be, and he is hereby, authorized and required to examine and adjust the claims of the legal representatives of George Fisher deceased, on principles of equity and justice, and having due regard to the proofs for the value of property taken or destroyed by the troops of the United States engaged in suppressing Indian hostilities in the year eighteen hundred and thirteen; and that the said legal representatives be paid for the same out of any money in the treasury not otherwise appropriated.

SEC. 2. *And be it further enacted, That, if it shall be found impracticable for the claimants to furnish distinct proof as to the specific quantity of property respectively taken or destroyed by the troops and by the Indians, it shall be lawful for the said accounting officer to apportion the losses caused by said troops and Indians, respectively, in such manner as, from the proofs, he may think just and equitable, so as to afford a fair and full indemnity for all losses and injuries occasioned by said troops, and allow the claimants accordingly: Provided, That nothing herein contained shall authorize any payment for property destroyed by Indians.*

Approved April 12, 1848.

Under the provisions of this law, there were two adjustments of the claim, which will appear by reference to copies of the Second Auditor's reports hereto attached as part of this report. After this settlement, Congress passed the following act :

AN ACT supplemental to an act therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty

of the Second Auditor of the Treasury, under the provisions of the act of Congress for the relief of the legal representatives of George Fisher, deceased, approved 12th of April, 1848, to re-examine the said case, and to allow the claimants the benefit of the testimony heretofore marked "*rejected for the want of authentication*," provided the same is now legally authenticated by the executive of Alabama; the adjustment to be made in strict accordance with the act herein above referred to, and to which this act is barely supplemental.

Approved December 22, 1854.

This law has never been executed. The Secretary of the Treasury refused to permit the Second Auditor to readjust the claim; his reasons therefor are hereto attached as a part of this report.

The committee therefore recommend the passage of the resolution herewith reported:

Resolved, That the existing law is ample in its provisions for the adjustment of the claim of the heirs of the late George Fisher.

TREASURY DEPARTMENT,
Second Auditor's Office, March 30, 1855.

SIR: By an act approved December 22, 1854, entitled "An act supplemental to the act for the relief of the legal representatives of George Fisher, deceased," which original act was approved April 12, 1848, it is made the duty of the Second Auditor to examine the said case and to allow the claimants the benefit of the testimony heretofore marked "*rejected for the want of authentication*," provided the same is now legally authenticated by the executive of Alabama," the adjustment to be made in strict accordance with the act above referred to, and to which this act is barely supplemental.

The facts in the case are these: My predecessor had submitted to him in this claim originally the deposition of six individuals, viz. Haden, Reviere, Presnal, Davis, Harrison, and Turner, testifying to the amount and value of property in the possession of George Fisher on a farm in Mississippi Territory, which, they alleged, was destroyed in the year 1813. Their evidence estimates the value of the property at sums varying between \$13,000 and \$22,000. In April, 1848, an award was made, on the deposition of Haden, Reviere, and Presnal, allowing \$8,873, without interest, the claimants protesting at the time against the amount and insisting upon their right to interest: the depositions of Davis, Harrison, and Turner, were rejected for want of authentication. In December, 1848, the Auditor again took up the case, and upon these rejected depositions allowed the further sum of \$8,973, with interest on the same from 13th of February, 1832, till December, 1848; in rendering the award, however, he deducted from said second allowance the sum of \$8,873, with interest thereon from 22d April, 1848, to December, 1848, amounting to \$9,237 79, which really absorbed the interest upon and a part of the principal of \$8,973, the second award; the claimants still protesting against the allowance, and contending for interest from 1813, the date of the

destruction of the property, and not from February, 1832, the time alleged by the Auditor as the earliest period of the presentation of the claim.

The question as to the time when interest should commence was submitted to the Attorney General, and, in an opinion given by him, dated February 16, 1849, he held that, as the Second Auditor had decided that the value of the property taken or destroyed, with interest upon it, should be paid as a fair and full indemnity, that the interest should be computed from the time when the property was taken and destroyed. At this point the case rested when I came into office, the 9th of April, 1849, and I submitted to the Secretary the two questions: 1st. Whether the opinion of the late Attorney General upon the decision of the late Second Auditor was obligatory on my action? and, second, ought interest to have been allowed under the act of Congress referred to? I was answered by an opinion from the Attorney General, dated May 8, 1849, that I had no discretion in the matter, and interest was allowed on \$8,973 from the 13th of July, 1813, to the 13th of February, 1832, amounting to \$10,004 89, presuming that the interest had been allowed as intended by the awards of my predecessor from 1832 to 1848.

In looking into the case now, under the provisions of the act approved December 22, 1854, I find that Congress acted under the impression that the testimony marked "rejected for want of authentication" had never been acted on, whilst the second award of my predecessor shows that he admitted the testimony and allowed the sum of \$8,973. I also discover the mistake of my predecessor in calculating the interest.

The point on which I desire your advice and decision is, whether I am restricted by the last act to the question of the rejected testimony, and whether I have the power to correct the error in the calculation of interest.

The whole subject, with all the papers connected with the case, is submitted for your decision.

I enclose a statement showing what amount has been paid under the several decisions heretofore made, and what amount is due if the awards of my predecessor are carried out, allowing interest upon the same from the 13th of July, 1813, to the 22d of April, 1848, the date of the first award. I also send with the papers, by request, the argument of counsel in the case.

Very respectfully, your obedient servant,

P. CLAYTON,
Second Auditor.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

Statement of the claim of the representatives of George Fisher, deceased, as due under the several awards heretofore made, and the amounts paid under said awards:

Amount awarded in April, 1848.....	\$8,873 00
Amount awarded in December, 1848.....	8,973 00

17,846 00

Interest on \$17,846, the amount of the above awards, from 13th July, 1813, the date of the destruction of the property, to 22d April, 1848, the date of the first award, 34 years, 9 months, and 10 days, at 6 per cent. per annum.....	37,238 66
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55,084 66

From which deduct—

Amount paid 22d April, 1848.....	\$8,873 00
Amount paid 30th December, 1848.....	8,797 94
Amount paid 12th May, 1849.....	10,004 89

27,675 83

27,408 83

Basis of the first award.

100 acres of corn on Bassett's creek, 30 bushels to the acre, (one-half) ...	\$1,500
400 cattle, \$10 each, (one-half)	2,000
350 stock hogs, \$3 each, (one-half).....	525
75 fat hogs, \$14 each, (one-half).....	525
Hats and goods used by troops, (one-half).....	500
4 dozen wine.....	48
125 gallons of whiskey	125
Wheat in stacks	250
Corn in Alabama.....	3,500

8,873

Error of \$100 in addition.

Basis of the second award.

Corn on Bassett's creek, 3,000 bushels, at \$1 each, (one-half)	\$1,500
Cattle, 500 head, (200 used,) at \$10 each.....	2,000
Hogs, stock, 350, at \$3 each, (one-half).....	525
Hogs, fat, 75, at \$14 each, (one-half).....	525
Furs, hats, and goods in store, whiskey and wine.....	673
Wheat in stacks, (35 acres).....	250
Whole crop on Alabama river farm, Fort Claiborne.....	3,500

8,973

TREASURY DEPARTMENT,
Second Auditor's Office, February 14, 1857.

SIR: In answer to the resolution adopted by the Committee on Indian Affairs of the Senate, and referred to this office yesterday, asking what action has been taken by the department in execution of the two acts of Congress "for the relief of the legal representatives of George Fisher, deceased, approved April 12, 1848, and December 22, 1854," and requesting the decisions of the Attorney General in relation to interest on said claim, I have the honor to report:

That on a settlement of the account on April 22, 1848,	
there was allowed and paid, without interest.....	\$8,873 00
That on settlement of December 30, 1848, there was	
awarded \$8,973, with interest thereon from February	
13, 1832, to date of this settlement, at 6 per cent. per	
annum, amounting to \$18,035 73, from which was de-	
ducted \$8,873 paid on previous settlement, and interest	
thereon, at the same rate, to the date of this settlement,	
amounting to \$9,237 79, which leaves a balance, which	
was paid December 30, 1848.....	8,797 94
And that on the last settlement, on the 12th of May, 1849,	
there was allowed and paid as interest on \$8,973,	
awarded to the representatives of George Fisher, from	
July 13, 1813, to February 13, 1832, at 6 per cent. per	
annum, under opinion of Attorney General of May 8,	
1849	10,004 89
	<hr/>
	27,675 83
	<hr/> <hr/>

The opinions of the Attorney General of December 20, 1849, February 16, 1849, and May 8, 1849, are herewith transmitted, as requested.

The foregoing exhibits all the action of this office, by settlement under the act "for the relief of the representatives of George Fisher," approved April 12, 1848. Under the act approved December 22, 1854, no action has taken place, further than is contained in my letters of March 30, 1855, and June 11, 1855, addressed to the Secretary of the Treasury. The final action on the case, I presume, is on file in the office of the Secretary, as it was not transmitted with the papers of George Fisher's representatives when returned to this office. The resolution and letter of Mr. Sebastian are returned herewith.

Very respectfully, your obedient servant,

P. CLAYTON,
Second Auditor.

Hon. JAMES GUTHRIE,
Secretary of the Treasury.

TREASURY DEPARTMENT,
April 4, 1855.

SIR: I find that the Second Auditor, under date of the 22d of April, 1848, rejecting certain depositions, for want of sufficient authentication, awarded to the representatives of George Fisher the sum of \$8,873, as a full and fair equivalent for the property destroyed by the United States troops, and that said sum was accordingly paid to the representatives. I also find that the said Auditor again took up the said case, under an opinion of the Attorney General as to the rejected depositions, and made another award, in which he allowed, on the whole case, for the property destroyed by the United States troops, the sum of \$8,973, being \$100 more than allowed by the first award, and on this latter award allowed interest at the rate of six per cent. from the 13th of February, 1832, the time when Congress was first petitioned to settle the claim, and deducted therefrom the first award of \$8,873, leaving a balance of \$8,797 94, which was paid the representatives.

I further find that, upon the opinion of Attorney General Toucey, you took up the case and allowed interest upon the last award of \$8,973 from the 13th of July, 1813, to the 13th of February, 1832, and allowed the further sum of \$10,004 89.

You will thus see that the sum awarded to Fisher's representatives, by your predecessor, under his second award, embracing the rejected depositions, has been fully paid, with interest from the 13th of February, 1813, and that there was not the two sums of \$8,873 and \$8,973, constituting \$17,846, awarded for the damages done by the United States troops, and, consequently, there is no such balance due for interest or otherwise, as you suppose.

In my opinion, the second award of your predecessor, allowing interest from 1832 to the time application was first made to Congress for compensation, was all that equity and justice called for, and that Attorney General Toucey's opinion ought not to have been applied to the case as it stood, and did not justify the further allowance of interest.

As the second award of your predecessor was made on the basis of the rejected depositions on making his first award, the act of 1854, authorizing those depositions to be considered, and a further award made, was for the want of the proper information; and as they have already been considered and acted upon, you are not authorized to revise the action of your predecessor under the provision of the act of 1854, but should make a detailed report of the case to me, so that I may lay it before the President, to be presented to Congress for their consideration.

I am, very respectfully,

JAMES GUTHRIE,
Secretary of the Treasury.

P. CLAYTON, Esq.,
Second Auditor of Treasury.

The papers are herewith returned.

TREASURY DEPARTMENT,
December 20, 1856.

SIR: I have the honor to report to you, in order that the fact may, if you think proper, be communicated to Congress, that the act entitled "An act supplementary to an act therein mentioned," approved 22d December, 1854, has not been executed for the reasons and under the circumstances which will be stated.

The act provides "that it shall be the duty of the Second Auditor of the Treasury, under the provisions of the act of Congress for the relief of the legal representatives of George Fisher, deceased, approved April 12, 1848, to re-examine the said case, and to allow the claimants the benefit of the testimony heretofore marked *rejected for the want of authentication*, provided the same is now legally authenticated by the executive of Alabama; the adjustment to be made in strict accordance with the act herein before referred to, and to which this act is barely supplemental."

The facts of the case are, that under the said act of 12th April, 1848, the Second Auditor made an award, upon the testimony of Robert G. Hayden, H. L. Deviene and Absalom P. Greswall, on which there was allowed and paid \$8,873. The Auditor, in December, 1848, made a subsequent award, in which, taking into view the testimony considered in the former, as well as the affidavits of Davis, Turner and Hanson, then rejected "because there was no proof that the several persons before whom they were taken were justices of the peace," allowed, by force of the whole, the sum of (being \$100 more than the sums previously allowed)..... \$8,973 00

The Auditor allowed interest on this sum from the 12th of February, 1832, when Col. Fisher first presented his petition to Congress..... 9,062 73

Making..... 18,035 73
And deducted the amount of the former award \$8,873 with interest thereon from date of payment..... 9,237 79

Being..... 8,797 84
which was paid on the 30th December, 1848.

Under opinions of successive Attorneys General, of 16th February and 8th May, 1849, the Auditor further allowed interest from the 13th July, 1813, when the injury is alleged to have been done, to the said 13th February, 1832, amounting to \$10,004 87, making in all \$27,675 83 awarded and paid in this case, of which \$8,973 is for damages, and \$18,702 85 for interest.

The act of 22d December, 1854, supplementary to an act therein mentioned, was introduced and passed in the Senate without papers.

The case was brought to my notice under a misapprehension on the part of the Auditor of the amount of principal paid under the act of 1848, and a submission of the question of a further allowance of interest. My decision on that point is annexed; the law being now settled at the treasury in respect to such cases, that where interest is not granted in express terms, or by necessary implication, it is not allowed.

By the passage of the recited act, Congress intended to give Fisher's representatives the benefit of the rejected testimony; but as they had already had the benefit of that testimony in the second award made by the Auditor, and which fact was not known to Congress when they passed the supplementary act, the particular relief provided for cannot be granted. It seems manifest that Congress did not intend any relief other than the benefit of the rejected testimony, although an examination of the case is directed; but if there was authority now to re-examine the whole case, and the accounting officers of the treasury should arrive at the conclusion that Fisher's representatives were entitled to compensation for the whole damage claimed, as well that done by the United States troops, for which the allowance was made, as that done by the Indians, which was excluded, inasmuch as Fisher's representatives have received more interest than the whole amount of damage proved, and as no interest on such claims is now allowable, no further payment could be made on this claim. Neither of the acts for the benefit of Fisher's representatives gives interest, or directs the accounting officers to allow it; and there is no general law authorizing the payment of interest in this class of cases, whilst the practice of the government is against it. A petition to Congress in this class of cases is an appeal to the equity and justice of all the people of the United States; and the act of Congress stands like a judgment or decree in equity between individuals, and carries no interest unless given in the judgment or decree.

Upon this state of the case, the act of December, 1854, being imperative, the thing directed having been before done, if you shall think it fit to submit this report to Congress, it will be for that body to repeal the said act, or take such other order in the premises as it may deem proper.

Most respectfully, your obedient servant,
JAMES GUTHRIE,
Secretary of the Treasury.

Endorsed as follows:

I approve the views expressed within, and am not inclined to recommend further legislation in the case.

FRANKLIN PIEBCE.

JANUARY 18, 1856.

TREASURY DEPARTMENT, December 20, 1855.

SIR: I have the honor to report to you, in order that the fact may, if you think proper, be communicated to Congress, that the act entitled "an act supplemental to an act therein mentioned," approved December 22, 1854, has not been executed, for the reasons and under the circumstances which will be stated.

The act provides "that it shall be the duty of the Second Auditor of the Treasury, under the provisions of the act of Congress for the relief of the legal representatives of George Fisher, deceased, approved April 12, 1848, to re-examine the said case, and to allow the

claimants the benefit of the testimony heretofore marked *rejected for the want of authentication*, provided the same is now legally authenticated by the executive of Alabama; the adjustment to be made in strict accordance with the act hereinbefore referred to, and to which this act is barely supplemental."

The facts of the case are, that, under the said act of April 12, 1848, the Second Auditor made an award upon the testimony of Robert G. Hayden, H. L. Deviene, and Absalom Preswal, on which there was allowed and paid \$8,873. The Auditor, in December, 1848, made a subsequent award, in which, taking into view the testimony considered on the former, as well as the affidavits of Davis, Turner, and Hanson, then rejected "because there was no proof that the several persons before whom they were taken were justices of the peace," allowed, by force of the whole, the sum of \$8,973, being \$100 more than the sum previously allowed. The Auditor allowed interest on this sum from the 12th of February, 1832, when Colonel Fisher first presented his petition to Congress, \$9,062 73, making \$18,035 73, and deducted the amount of the former award, \$8,873, with interest thereon from date of payment, \$9,237 79, leaving \$8,797 74; which was paid on the 30th of December, 1848.

Under opinions of successive Attorneys General, of 16th February and 8th May, 1849, the Auditor further allowed interest from the 13th July, 1813, when the injury is alleged to have been done, to the said 13th of February, 1832, amounting to \$10,004 89—making, in all, \$27,675 83 awarded and paid in this case, of which \$8,973 is for damages, and \$18,702 83 for interest.

The act of December 22, 1854, supplementary to an act therein mentioned, was introduced and passed in the Senate without papers. The case was brought to my notice, under a misapprehension on the part of the Auditor of the amount of principal paid under the act of 1848, and a submission of the question of a further allowance of interest. My decision on that point is annexed; the law being now settled at the treasury, in respect to such cases, that where interest is not granted in express terms, or by necessary implication, it is not allowable.

By the passage of the recited act, Congress intended to give Fisher's representatives the benefit of the rejected testimony; but as they had already had the benefit of that testimony in the second award made by the Auditor, and which fact was not known to Congress when they passed the supplementary act, the particular relief provided for cannot be granted. It seems manifest that Congress did not intend any relief other than the benefit of the rejected testimony, although a re-examination of the case is directed; but if there was authority now to re-examine the whole case, and the accounting officers of the treasury should arrive at the conclusion that Fisher's representatives were entitled to compensation for the whole damage claimed, as well that done by the United States troops, for which the allowance was made, as that done by the Indians, which was excluded, inasmuch as Fisher's representatives have received more interest than the whole amount of damage proved, and as no interest on such claims is now allowable, no further payment could be made on this claim. Neither of the

acts for the benefit of Fisher's representatives gives interest, or directs the accounting officers to allow it; and there is no general law authorizing the payment of interest in this class of cases, whilst the practice of the government is against it.

A petition to Congress, in this class of cases, is an appeal to the equity and justice of all the people of the United States; and the act of Congress stands like a judgment or decree in equity between individuals, and carries no interest unless given in the judgment or decree.

Upon this state of the case, the act of December, 1854, being imperative, the thing directed having been before done, if you shall think it fit to submit this report to Congress, it will be for that body to repeal the said act, or take such other order in the premises as it may deem proper.

Most respectfully, your obedient servant,

JAMES GUTHRIE,
Secretary of the Treasury.

The PRESIDENT OF THE UNITED STATES.

Endorsed as follows:

I approve the views expressed within, and am not inclined to recommend further legislation in this case.

FRANKLIN PIERCE.

JANUARY 18, 1856.

ATTORNEY GENERAL'S OFFICE, *December 20, 1848.*

SIR: In reply to your inquiry, I beg leave to say that, under the act of Congress of April 12, 1848, for the relief of the legal representatives of George Fisher, deceased, authorizing and requiring the Second Auditor of the Treasury to examine and adjust their claims for spoliations during the war of 1812, on principles of equity and justice, the Second Auditor is very clearly permitted to receive proof of a claim, although he may have previously ruled out the same proof for informality, and reported upon the other claims satisfactorily established. Indeed, I think he is required to do it. It is not necessary for Congress to re-enact the law. If the claim be a just one, the act is broad enough to permit it to be allowed. No chancellor would feel at liberty peremptorily and finally to reject it because there was a slip in the forms of proof. I think the Second Auditor has full power under this act to do justice upon the principles which prevail in courts of equity, one of which is, not to permit a just claim to be defeated by an accidental omission or mistake like that in question.

I have the honor to be, very respectfully, sir, your obedient servant.

ISAAC TOUCEY,
Attorney General.

Hon. ROBERT J. WALKER,
Secretary of the Treasury.

ATTORNEY GENERAL'S OFFICE, *February 16, 1849.*

SIR: In administering the relief provided by the act of Congress for the legal representatives of George Fisher, deceased, approved April 12, 1848, it being held by the Second Auditor that the value of the property taken or destroyed, with interest upon it, is to be paid as "a fair and full indemnity," it would seem to follow, of course, that the interest should be computed from the time when the property was taken or destroyed by the troops of the United States.

As to the rate of interest, it is not fixed by any contract, nor is interest to be paid in pursuance of any contract. It is to be referred to as a measure of what is deemed, under the laws and practice of this government, a fair indemnity for the detention of the value, and that is, six per cent. per annum during the period of the detention.

I have the honor to be, very respectfully, sir, your obedient servant,

I. TOUCEY,
Attorney General.

Hon. ROBERT J. WALKER,
Secretary of the Treasury.

ATTORNEY GENERAL'S OFFICE, *May 8, 1849.*

SIR: In the matter of the claim of the representatives of George Fisher, made under the act for their relief, of the 12th April, 1848, the two questions you have submitted to this office I have duly considered.

They are these:

"*First.* Is the opinion of this office of the 16th February, 1849, upon the decision of the late Second Auditor, obligatory upon the present incumbent?"

"*And secondly.* Ought interest to have been allowed under the act of Congress referred to?"

First. The duties of the Attorney General are prescribed by the judiciary act of 1789, and are, "to give his advice and opinion upon questions of law, when required by the President of the United States, or when requested by the heads of any of the departments, touching any matters that may concern their departments."

The act does not declare what effect shall be given to such advice and opinion, but it is believed that the practice of the government has been invariable always to follow it. This has been done from the great advantage, and almost absolute necessity, of having uniform rules of decision in all questions of law in analogous cases—a result much more certain under the guidance and decision of a single department, constituted for the very purpose of advising upon all such questions, and with supposed special qualifications for such a duty.

In my opinion, this practice should be considered as law.

Second. By reference to the act giving relief in this case, it will be seen that the whole subject of the claim is submitted to the exclusive judgment of the Second Auditor. No other department had any jurisdiction over it. His judgment was made absolute. By the last re-

port of that officer, he did allow interest ; and the interest, with the principal then allowed, has been paid the claimants. This, in my judgment, decides the question as to the title to interest under the act. The Auditor thought—whether correctly or not is not submitted to me, and I express no opinion upon it—that such was the meaning of the law. His successor, under another rule perfectly well settled, has no right to disregard the decision. He is bound to esteem it a correct one.—(See *United States vs. Bank of Metropolis*, 15 Pet. 377.)

I have the honor to be, respectfully, sir, your obedient servant,
REVERDY JOHNSON.

Hon. WILLIAM M. MEREDITH,
Secretary of the Treasury.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1857.—Ordered to be printed.

Mr. MALLORY made the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of George T. Parry, of Philadelphia, praying for an investigation of a certain invention denominated an "Anti-friction Box," designed to relieve the friction incident to heavy revolving bodies, and particularly adapted to the propeller steamships of the United States navy, make the following report:

If it were allowable, the committee could in no way communicate to the Senate so just and satisfactory a view of the nature and importance of the invention as by presenting to the inspection of each member of the Senate a working model of the "Anti-friction Box," accompanied by a description of the various uses to which it is applicable in the naval service of the United States. In its power of reducing friction, it is one of the most successful, no less than one of the most simple, inventions of the age. Hence it is peculiarly adapted to receive the pressure or weight occasioned by the forward thrust of a screw propeller.

It may not be considered out of place to state that, upon the first introduction of the submerged screw propeller, much difficulty was experienced in obtaining the proper method of receiving the thrust and relieving the engine from the extra amount of duty required to overcome the enormous friction it occasioned. It seemed to be conceded that by the substitution of a rolling surface more revolutions of the wheel would be obtained without a corresponding increase of the pressure of steam, consequently greater speed, with *saving in fuel*, together with a diminished consumption of oil used in lubricating the thrust-bearing, and with that view a large number of experiments were made, but without satisfactory results.

The attention of those interested was next directed to the discovery of some means of avoiding the continual liability of the rubbing surfaces of the thrust-bearing from becoming heated and abraded under pressure. Flanches or collars, discs of various kinds of metal placed at the end of the shaft were tried, and were but partially successful. It was next deemed advisable to scatter the friction over many parts at one and the same time, a device which was gained by encircling the shaft with a series of rings having a bearing in grooves out on the

pillar or thrust-block. In all of these anti-friction devices it may be seen that the full amount of friction, incident to the thrust, still continued, requiring an extra amount of power from the engine to overcome it. With all these disadvantages rubbing surfaces continued to be used, until Mr. Parry invented his singular and simple invention, which, in the opinion of your committee, is all that can be desired to produce a perfect rolling thrust-bearer for screw-steamers. Increase of power, with a saving in the consumption of fuel, which, in a sea steamer, is of the greatest importance, are the immediate and most important results of its application to the propeller shaft. This invention consists of a series of rollers made in the form of double frustra cones united at their larger ends, and running in grooves of nearly corresponding form. By their peculiar shape no increase of pressure or speed can make them deviate from their proper paths around a circle. Apparently, their shape is an innovation of the established rules of mechanics, but the committee have undoubted testimony of their uniform working, not only in the large frigates Wabash and Minnesota, but in other instances of their application.

In November, 1855, the honorable Secretary of the Navy ordered a commission, consisting of three chief engineers, to examine and test its value.

The following extract from their report shows conclusively its great saving in fuel, increase of speed," &c:

"Accordingly, on the 21st, we ran the vessel, with two heavy scow in tow, ten measured miles down the river and back; and on the 22d we ran the vessel, with a little increased load, under the same circumstances of tide, the same distance down the river and back with the 'anti-friction box.'

"The following are the results:

"With the ordinary thrust-bearing, the coal consumed, 1,182 pounds.

"Pressure of steam, (average,) 60 pounds.

"Time in steaming, 3 hours 10 minutes.

"Results with the anti-friction box:

"Whole number of revolutions, 12,512.

"Coal consumed, 765 pounds.

"Pressure of steam, (average,) 60.4 pounds.

"Time steaming, 3 hours and 11 minutes.

"Aside from any gain in the consumption of *fuel and oil*, we considered the 'anti-friction box' to combine many advantages. It is simple in its construction, cannot easily get out of order, and, if it should, can be repaired without difficulty.

"JESSIE GAY,

"SAMUEL W. ARCHBOLD,

"J. W. KING,

"Chief Engineers U. S. Navy."

Your committee are not prepared to endorse the accuracy of the extraordinary results reported by the naval engineers who tested this invention on the Cushing. But, if the gain in revolutions and fuel were but half those reported, the importance of this application to the propeller shaft must be sufficiently manifest. Indeed, if it produced no gain in either of those respects, its exemption from all liability to becoming heated by friction would alone render its adoption of great consequence, and particularly to war vessels, whose magazines are necessarily placed in the vicinity of this bearing.

Your committee do not advise the introduction of this invention in the vessels of the navy, because the Navy Department, having the authority to adopt all valuable improvements for the service, will, doubtless, take the one in question, if, upon a thorough investigation, it shall verify, or even approximate the verification of the results of its previous tests and trials.

If the report of the trial heretofore given shall be regarded as an accurate index of the applications of the "anti-friction box" to ocean war-steamers, the following important results of its working on board the frigate Wabash, upon extended voyages, would be arrived at :

A gain of three revolutions per minute would be equal to 14.11 miles per day, allowing twenty-five per cent. for slip of the wheel ; and consequently, in a voyage of twelve days, it would be 169.32 miles, or about 35 tons, equal to 2.91 tons per day. In China, or other foreign seas, where coal is worth \$20 per ton, this would be equal to \$58 91 per day ; and should a steam-frigate, during a three years' cruise, steam one-sixth of her time, this would produce a saving of \$10,621 in the cost of fuel alone, regardless of the saving in labor and time of getting on board, and the storage and handling of five hundred and thirty-one tons of coal.

Your committee cannot give the practical working of the anti-friction box at sea, as compared with the thrust-bearing now in use on board the Wabash, where it has been used, because the engineers of this ship found the former so satisfactory in its results that no comparison was instituted ; but they doubt not that the Navy Department will direct a careful and accurate comparison to be made, and adopt that course, with reference to this improvement, which the public interests call for.

The following exhibits were filed with the memorial :

UNITED STATES STEAM-FRIGATE WABASH,
Brooklyn, N. Y., February 6, 1857.

SER: In compliance with your order, directing me to report the results of any trials or experiments made here with "Parry's Anti-friction Box," in comparison with the ordinary thrust-bearing, I have to state that no experiments have been made on board this vessel for the purpose of testing the relative value of the two kinds of instruments as regards economy of fuel.

It was my intention, from the first application of the patent thrust to this ship, to make careful and accurate experiments of comparison ;

but we have been obliged to depend entirely upon the patent thrust, and have not as yet deemed it prudent to use the ordinary one sufficiently long to conduct the experiments.

During our voyage to Aspinwall I removed the whole power from the patent to the ordinary thrust, with the intention of using it several hours and noting the results necessary for calculation, but it soon begun to heat, and, as we already had much difficulty in keeping other bearings sufficiently cool to work them, I reluctantly abandoned the attempt to use it hence to secure necessary data. It may not be out of place here to say that the patent "anti-friction box" has given more than ordinary satisfaction to the engineers of this ship. It is durable, correct, and beautiful in its operation, requiring no attention except a few drops of oil occasionally; up to this time it shows no evidence whatever of wear, nor is there the slightest probability of its getting out of order within the next ten years. I consider the invention a highly important and valuable appendage to screw steamers.

Respectfully, your obedient servant,

J. W. KING,
Chief Engineer U. S. Navy.

Commodore PAULDING,
Commanding U. S. Home Squadron.

Forwarded by your obedient servant,

H. PAULDING,
Commanding Home Squadron.

PHILADELPHIA, *April 14, 1854.*

GENTLEMEN: The patent anti-friction box has been in constant use since the 14th of May, 1852. Before applying the box, we used a collar on the shaft, such as are generally used on propellers; we found that the box increased the number of turns from $2\frac{1}{2}$ to $3\frac{1}{2}$ per minute, with the same power of engine; running light, our average number of turns is 400,000 per month. It does not require oiling one-tenth as often as the old bearing, and, from careful observation, I cannot perceive that the rollers or plates have worn at all during the last year. The old collar used has constantly been heating, and we were forced to pass a stream of water around the shaft to cool it.

I have not known the Parry box to heat since we used it. I am of opinion that if the box had been placed nearer the propeller a still greater number of turns would have been gained. I regard the box as an invaluable addition to our steamer.

J. M. BURKET,
Engineer of Steamer America.

The COMMITTEE OF SCIENCE AND ART,
Franklin Institute.

ENGINEER'S OFFICE, U. S. NAVY YARD,
New York, January 13, 1855.

Since my first acquaintance with the patent anti-friction box, invented by Mr. Parry, my attention has been frequently called to the numerous advantages of its application to machinery for public structures.

The peculiar form of roller used obviates many of the objections to friction boxes, and secures, as practical tests have long demonstrated, a simple and durable arrangement for the transmission of power which cannot fail to commend itself to our constructing engineers.

For propeller shafts, rudders, capstan heads, between decks, cranes, quoin posts of canal lock gates, railroad turn tables, cranes, and all other mechanical devices which tend to produce great friction, it offers a convenient substitute, with rolling friction comparatively slight to the present evils of sliding friction, and much, very much, facilitate the transmission of power.

WARD B. BURNETT,
Civil Engineer U. S. Navy Yard, Brooklyn, N. Y.

STEAMSHIP CITY OF BOSTON,
Philadelphia, December 27, 1854.

In August, 1854, Parry's anti-friction box was attached to the shaft of the steam propeller ship City of Boston, running between this port and Boston; the rollers and box continue in perfect order, and I am convinced that it is better than any thrust-bearing I know of. Since its application it has never been known to heat; neither do I think it possible to do so, let the revolutions of the wheel be what they may. From its entire absence of friction, a saving of at least one tenth of oil is effected. It is a decided gain in power of at least three turns per minute; and in a heavy sea-way, where all the power of the engine is required, it proves its value by relieving us of all apprehension of the heating of the thrust-bearing.

WM. A. PENN,
Chief Engineer.

BORDENTOWN, NEW JERSEY.

In July, 1853, I attached Parry's anti-friction box to the shafts of the steam propeller Amboy. It receives the back and forward thrust of the wheels, each eleven feet in diameter. Since that time the boat has been running as a regular tow-boat from Richmond to Bordentown, and the rollers and box are now in as good order as when first applied; and I am convinced, by thorough practice, that it is the best thrust-bearing that can be used. It does not heat or corrode, requires very little oil, and is a decided gain in power or usefulness over any rubbing surface that may be sufficient to resist the pressure of the forward thrust of a propeller shaft.

ROBERT ALLEN,
Sup't of Steamboats for Camden and Amboy R. R. Co.

From personal knowledge of the machinery and propellers on board the steamer Amboy, I fully agree with the foregoing statement as to its merits and decided gain in power over any rubbing surface that may be used for receiving the thrust of a propeller shaft.

ISAAC DRIPPS,

Late Sup't of Machinery for Camden and Amboy R. R. C.

FRANKLIN IRON WORKS, PHILADELPHIA.

Mr. Parry having requested a statement from us of the practical working of his patent anti-friction box, we cheerfully subscribe our names to the following:

We placed his box on the steam propeller Bird, and so arranged it that the entire thrust of the vessel and shaft was received by the rollers and box, and it appeared to us that the friction incident to the *forward thrust* was almost entirely obviated. In no instance did the rollers or box show any heat during the rapid revolutions of the shaft. After four months constant use on the Bird, and eighteen months on the steamer America, we examined the rollers, and could not perceive any signs of wear or of a rubbing or sliding friction taken place on either side of the cones.

We have made the box for the steamer America 450 tons, ship Peytona 850 tons, ship City of Boston 650 tons, steamers Huron, W. F. Cushing, Uncle Sam, &c., &c., where it has proved its value in diminishing friction, making thereby a decided gain in the effective power of the engine, said gain and power being the difference existing between a rubbing friction and a smooth rolling surface.

JAMES T. SUTTON, &c.

STEAMSHIP PALMETTO,
Boston Line of Steam Packets.

I am well acquainted with the great advantages derived from the use of Parry's anti-friction box, by thoroughly testing it on the steamer City of Boston.

When the ship was sold off the line it was in perfect order, and presented no appearance of wear from its hard service. The same kind of a box is now on the shaft of this ship and gives the same satisfaction. Independent of the increased number of revolutions it gives per minute over rubbing surfaces, which are always liable to get hot under pressure, I consider the saving it effects in *oil alone*, together with the certainty of it not heating, sufficient to justify myself in saying that it is invaluable as a thrust-bearing for a steamship.

WM. A. PENN,
Chief Engineer.

PHILADELPHIA, *January 22, 1857.*

SIR: In reply to your favor of the 20th requesting my opinion of the "qualities of and usefulness over rubbing surfaces," of your conical roller thrust-bearing for propellers, I would say that from a knowledge of the principles involved in its construction, as well as observation of its qualities as developed on the United States steamer "Wabash" and other (merchant) steamships, I consider it superior to any form of thrust-bearing in which rubbing surfaces are employed, on account of the reduced friction, involving less waste of power and less wear and tear than incident to collar bearings, and in large steamers the saving caused by reduction in these two items is of grave importance.

Very respectfully,

J. VAUGHN MERICK.

GEORGE T. PARRY.

PHILADELPHIA, *January 13, 1857.*

This is to certify that I was in command of the steamer Wm. F. Cushing when Parry's anti-friction box was placed on her shaft for a thrust-bearing. At that time I was decidedly opposed to it being used on the shaft of the vessel, as I considered the principle of the invention to be in opposition to the general rules of mechanism. My partner insisted on having it, and promised if it did not suit me he would pay all expenses himself.

I therefore determined to test the utility of the invention to the utmost of my ability, and, with that view, I first accurately measured the diameter of the rollers and depth of cone, and, after running the steamer for one year at ship-towing, and making from seventy-five to eighty turns of the shaft per minute, I had the box taken off, and by measurement could not perceive the least decrease in size of roller or depth of cone. In experimenting with the box, I secured the vessel to the wharf and run the engine at eighty pounds pressure of steam with the common friction collar which we previously used for the thrust. I then removed it and placed Parry's box on the shaft, and, with the same pressure of steam, it made a difference varying from four to five turns per minute with a seven and a half feet propeller. The journals on the main pedestal, which had always previously heated, now worked perfectly cool; and, daily witnessing the ease of motion that the box gave to the engine, the gain in speed and saving in oil, I was compelled to acknowledge that it was the invention above all for a propeller. And I unhesitatingly say that in any steamer on which it may be placed it will pay for itself by the saving of oil within one year.

W. P. CROPPER.

Remarks on George T. Parry's doubled-coned anti-friction rollers.

There are two sets of the above rollers in use on the Philadelphia and Reading Railroad, one under a heavy twenty-five-foot iron-turning platform for large locomotive engines, and the other under a six-ton crane.

Both have been in operation some time, and have proved satisfactory, moving with less friction than any other plan of bearing I have seen, and requiring no repairs and very little grease or oil. I have known plain frustrums of cones to be used under heavy bearings with the smaller end next the centre of revolution, but with a constant tendency to press away from said centre when revolving under pressure. I am of opinion that the decreased friction with this plan of roller is owing to the fact that the two forces, (that is, one tending to drive the inner frustrum from the centre and the other frustrum towards the centre,) by opposing, neutralize each other and secure an almost entire destruction of that description of friction during their revolution under pressure.

I consider them a most useful invention, as greatly decreasing friction on all heavy bearings for either vertical or horizontal shafting or machinery.

G. A. NICOLLS,
Engineer and Superintendent of Reading Railroad.

PHILADELPHIA, *January 23, 1857.*

SIR: Your friction-box has been in use on the shaft of the "America" now four years; it has been most thoroughly tried, having been in constant use with heavy work. I consider it almost indispensable, not only saving great friction, but also a complete preventative from heating, which, prior to its adoption, was a great annoyance.

In consequence of the carelessness of the machinist in putting it on last summer, after some repairs had been done to the engine, he not adjusting it square with the shaft, we were compelled to have the box turned true again. This is the only repair it has ever required, and I have no doubt but that it would have never required repairs of any consequence for another period of five years were it not for his carelessness.

Yours, &c.,

JNO. H. PENROSE,
President Phila. Steam-Pump and Towing Co.

Mr. GEORGE T. PARRY.

REPORT

OF

THE COMMITTEE ON THE JUDICIARY,

ON THE

Protests of certain members of the Legislature of Pennsylvania against the election of the Hon. Simon Cameron as a Senator in Congress.

MARCH 11, 1857.—Submitted and ordered to be printed with the views of the minority of the committee.

The Committee on the Judiciary, to whom was referred the protest of certain members of the senate and house of representatives of the State of Pennsylvania, alleging certain irregularities and illegalities in the election of the Hon. Simon Cameron, a senator from said State, report:

That the grounds of protest are stated as follows, viz:

1st. That there was not a concurrent majority of each house in favor of the candidate declared to be elected.

2d. That the senate did not comply with the requirements of the act of 2d July, 1839, by appointing a teller and making a nomination of persons to fill said office, and giving notice of said appointment and nomination at least one day previous to the meeting of said convention.

In addition to the two grounds aforesaid, the protest presented by the members of the house of representatives charges,

3dly. "That the election of the said Simon Cameron was procured, as they are informed and believe, by corrupt and unlawful means, influencing the action and votes of certain members of the house of representatives of this State; and they request that an investigation be ordered by your honorable body, not only into the regularity of the said election, but into the charges herein presented, in order that an opportunity may be afforded of submitting the proof upon which they rest."

In relation to the first two grounds of protest, the committee are unanimously of opinion that no facts are presented tending in the slightest degree to impair the validity of the election of Mr. Cameron.

It is true that the law of Pennsylvania on the subject of the election of senators requires that each branch of the legislature shall appoint one teller, and nominate at least one person to fill such office, and communicate to the other house the names of the persons so appointed. It is also true that in the use of such corrupt means or, indeed, had any know-

and nominated at least one day previous to the joint meeting; but the same law also provides, that at the hour of twelve, on the second Tuesday in January, next preceding the expiration of the constitutional term of a senator, the members of both houses shall meet in convention in the chamber of the house of representatives, and choose a senator *viva voce* from the persons so nominated, as aforesaid; and also expressly provides that the person who shall receive the votes of a majority of the members present shall be declared duly elected.

From the extracts furnished by the protesting parties, taken from the journals of the two houses, it appears that the two houses did meet in joint convention on the day and at the place appointed by law, and in accordance with resolutions passed in each house separately, and that one hundred and thirty-three members, composing the entire legislature of Pennsylvania, were present and voted, and that Simon Cameron received sixty-seven votes, and sixty-six votes were given for all the other candidates; and that Simon Cameron having thus obtained a majority of the votes of all the members present was declared duly elected senator.

It appears from the journal of the senate that the appointment of a teller and the nomination of candidates, and the communication to the other house of the appointment and nomination so made, all took place on the day of the election, instead of one day previous to the election, as required by the law of the State; but your committee regard this provision of law as purely directory in its nature, and are of opinion that a failure to comply with this formality would, under no circumstances, suffice to vitiate an election otherwise legal and valid; but where, as in the present case, both houses proceeded without objection from any source to perform their constitutional duty of electing a senator, the necessity of complying with any particular forms required by law may fairly be considered as waived by common consent, and it is entirely too late, after the result of the voting has been ascertained, to raise a question as to the mode of proceeding.

The objection that there was not a concurrent majority of each house in favor of the candidate declared to be elected, is equally untenable under the statute of Pennsylvania, and the uniform practical construction of the Federal Constitution for the last half century.

The third ground of protest is signed by members of the house of representatives of Pennsylvania, but not by the members of the senate of that State.

It is a general allegation "that the election of the said Simon Cameron was procured, as they are informed and believe, by corrupt and unlawful means, influencing the action and votes of certain members of the house of representatives," and the Senate of the United States is asked to investigate the charge.

The committee cannot recommend that this prayer be granted. The allegation is entirely too vague and indefinite to justify such a recommendation. Not a single fact or circumstance is detailed as a basis for the general charge. Neither the nature of the means alleged to be corrupt and unlawful, nor the time, place, or manner of using them is set forth, nor is it even alleged that the sitting member paraded of their existence. Under no state of facts could your committee

deem it consistent with propriety, or with the dignity of this body, to send out a roving commission in search of proofs of fraud in order to deprive one of its members of a seat to which he is, *prima facie*, entitled, still less can they recommend such a course when the parties alleging the fraud and corruption are themselves armed with ample powers for investigation. If it be, indeed, true that members of the house of representatives of Pennsylvania have been influenced by corrupt considerations or unlawful appliances, the means of investigation and redress are in the power of the very parties who seek the aid of the Senate of the United States. Let their complaint be made to the house of which they are members, and which is the tribunal peculiarly appropriate for conducting the desired investigation. That their complaint will meet the respectful consideration of that house your committee are not permitted to doubt. If upon such investigation the facts charged are proven, and if they, in any manner, involve the character of the recently elected member of this body from the State of Pennsylvania, the Constitution of the United States has not left the Senate without ample means for protecting itself against the presence of unworthy members in its midst. In the meantime your committee see no reason for initiating any proceeding on the subject, and submit the following resolution :

Resolved, That the Committee on the Judiciary be discharged from the further consideration of the subject.

VIEWS OF THE MINORITY.

The undersigned, a member of the Committee on the Judiciary, dissents from the conclusion at which his colleagues have arrived in reference to the contested election of a senator for the State of Pennsylvania.

In the protest submitted by forty-four members of the House of Representatives in that State will be found an allegation in these words:

"The undersigned further charge that the election of the said Simon Cameron was procured, as they are informed and believe, by corrupt and unlawful means influencing the action and votes of certain members of the House of Representatives of this State; and they request that an investigation be ordered by your honorable body, not only into the regularity of the said election, but into the charges herein presented, *in order that an opportunity may be afforded of submitting the proof upon which they rest.*"

It is objected, by the majority of the committee, that this paragraph does not specifically relate the facts on which a charge of corruption can be predicated.

If the case were only between contestor and contestee, as individuals, there might be some force in the objection; but it is one in which a number of the qualified electors, themselves public agents, inform the Senate that corrupt as well as unlawful means have been used in the election.

The accusation comes from a responsible source, and is too serious, too distinctly and directly made, to be treated with indifference. It concerns the honor of the Senate and the security of the government, that no rule of merely technical character, applicable as between individuals, should prevent a thorough investigation of the case. This would seem to be a duty the more imperative in view of the statute, enacted at the late session, in which very stringent and unusual provisions have been made for the detection of corrupt practices by members of Congress.

The undersigned concurs with the majority in reference to the other points of contest.

G. E. PUGH.

REPORT

OF

THE COMMITTEE ON THE JUDICIARY,

ON THE

Protests against the election of the Hon. Graham N. Fitch, as a senator in Congress from the State of Indiana.

MARCH 13, 1857.—Submitted, considered, and ordered to lie on the table, and be printed, with the accompanying papers.

The committee have had the same under consideration, and find that important matters of fact alleged by the protestants, in connexion with the manner in which the election of the sitting member was had, are denied by him, and that it becomes necessary, in the opinion of the committee, to take the testimony of persons residing in the State of Indiana, for the better ascertainment of these disputed facts. For instance, it is, among other things, alleged by a portion of the protestants that "there was no joint convention of the two houses of said general assembly on said day" on which the election in dispute took place, and that a minority only of the legally sitting senators of Indiana participated in said election, which statements are denied by the sitting member; and he affirms, on the contrary, that "he was elected to said office by a majority of all the members composing the legislature of the State, they being then and for that purpose assembled in joint convention," and that he was elected whilst in such joint convention by a majority of the legally qualified members of the senate of the State, and of the legally qualified members of the house of representatives, respectively. For the proper ascertainment of these contested facts, and the better elucidation of the matters in dispute contained in the several protests herewith submitted, and the reply of the Hon. Graham N. Fitch, your committee recommend that leave be given to take testimony in the city of Indianapolis, and State of Indiana, and recommend the adoption of the following resolution:

Resolved, That in the case of the contested election of the Hon. Graham N. Fitch, a senator returned and admitted to his seat from the State of Indiana, that the sitting member, and all persons protesting against his election, or any of them, by themselves, or their agents or attorneys, be permitted to take testimony on the allegations of the protestants and the sitting member, touching all matters of fact

therein contained, before any judge of the district court of the United States, or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis.

To the Senate of the United States :

The undersigned, duly elected and qualified members of the house of representatives of the general assembly of the State of Indiana, hereby protest against the pretended election of Jesse D. Bright and Graham N. Fitch, on the 4th day of February, A. D. 1857, as senators of the State of Indiana in the Congress of the United States, the former for the six years from the 4th day of March next, and the latter for the six years from the 4th day of March, 1855, by a portion of the senators and representatives of said general assembly, for the following reasons :

First. There was no agreement of the two houses of the general assembly, by resolutions or otherwise, to proceed to the appointment or election of senators in Congress on said day, or any other day of the present session of the general assembly.

Second. There was no joint convention of the two houses of the said general assembly on said day ; nor was there any law of the State authorizing a joint convention on that or any other day for the appointment or election of United States senators ; nor was there any resolution, or joint resolution, approved or adopted by the two houses of the said general assembly, or either of them, authorizing such joint convention.

Third. Said pretended joint convention was a mere assembly of a portion of the senators and representatives of the said general assembly, not in a legislative capacity, but as individuals, without any authority of law, without precedent in the history of legislature of the State, and having no legislative sanction ; and said senators and representatives, when so convened, had no more constitutional right to appoint or elect senators than any equal number of private citizens of the State.

Fourth. There was not a constitutional quorum of either house of the general assembly present in said pretended joint convention, there being only twenty-three senators and sixty-one representatives, when, by the 11th section of the fourth article of the constitution of this State, it requires two-thirds of each house to constitute a quorum to do business ; and when, by the law of the State, the number of senators is fixed at fifty, and the number of representatives at one hundred, in said general assembly.

Fifth. Because the undersigned, as legally elected and qualified representatives in said general assembly, have been deprived of their constitutional right to assist in the legal election of the senators in the Congress of the United States by said illegal, revolutionary, and unauthorized election.

Sixth. Because the legislature of Indiana, as such legislature, either by separate action of the two houses, or otherwise, as such legislature, had no part or voice in such pretended elections, and the same were in direct violation of the third section of the first article of the

Constitution of the United States and the fourth section of the said article.

Seventh. Because said pretended elections are wholly void.

Eighth. Because if said elections are held valid, such decision will destroy the legal existence of the general assembly of this State, and install in its place any mob which may see proper to take forcible possession of the house as a joint convention of the general assembly, without the concurrence of either body, the sanction of the Constitution, or authority of law.

For these and other reasons which might be named, the undersigned protest against the validity of said pretended elections, and ask that the Senate of the United States may declare them null and void.

Given under our hands this 4th day of February, at Indianapolis, A. D. 1857.

S. P. Williams,
Geo. Crawford,
James M. Austin,
J. N. Gordon,
C. M. Stone,
H. W. Sherman,
G. D. Wagner,
Thomas J. Neal,
G. K. Steele,
D. Batterton,
Alex. H. Conner,
M. P. Evans,
Wm. C. Jefferis,
S. B. Ward,
J. D. Conner,
Wm. Grose,
A. B. Price,
John Davis,

N. H. Ballinger,
Geo. C. Merrifield,
Silas Colgrove,
Geo. Moon,
William Hawkins,
John Whitcomb,
D. C. Branham,
J. W. Hutchings,
Robert Boyd,
John M. La Rue, Tippecanoe
county,
Marcus C. Smith,
Elijah Vansandt,
Smith Vawter,
Wm. M. Clapp,
R. N. Todd,
Milton Mercer.

The undersigned, a senator of the United States from the State of Indiana, and now acting as a duly qualified senator of the United States, submits to the honorable the Judiciary Committee of the body to whom the validity of his election has been referred, the following, as points upon which he believes and is advised that his own rights and the rights of his State require that evidence be taken and be before the committee, in order to enable them to decide understandingly and justly in the premises :

First. That he was elected to said office by a majority of all the members composing the legislature of the State, they being then and for that purpose assembled in joint convention.

Second. That he was elected, whilst in such joint convention, by a majority of the legally qualified members of the senate of the State, and of the legally qualified members of the house of representatives, respectively.

Third. That in order to ascertain the facts stated in the preceding point, he will be able, by evidence, to show that three of the persons who are contesting his election were not then, and are not now, legally members of the said State senate, and had no right whatever, under the laws and constitution of the State, to be considered, or, in any particular, to act as members of that body; and that this was at the time, and still is, well known to the other contestants.

Fourth. That in the organization of said State senate, according to the constitution, laws, and usage of the State, the lieutenant governor presides and superintends the admission of the members, and the taking the required oaths of office. That upon this occasion, in violation of such constitution, laws, and usage, the said three members, who were without the expressly required credentials of election, the certificate of the proper and only returning officer, and whose seats were also known to be contested and on grounds of fraud, also known to be true, were, by a presiding officer, chosen for the purpose by the members of the senate, designated as republicans, contrary to all law, and by naked wrong, directed, notwithstanding, to be sworn in, and for the clear purpose, illegal and fraudulent in fact, of defeating an election of senators of the United States.

Fifth. That the said convention by whom, as hereinbefore alleged, the undersigned was elected a senator of the United States, was assembled in accordance with an express provision of the constitution of the State, and that, in accordance with the long and uniform usage of the State in that particular, the same was adjourned from day to day by the proper presiding officer thereof, and vested with the authority so to adjourn, and that each adjournment was made without objection by a majority of the senate, even considering the three persons aforesaid to have been members of that body being present.

Sixth. That there is not now, in said State, as the undersigned is advised, any law for the regulation of the election of senators of the United States, or in any way providing for the same; and that according to the best professional and judicial opinions in the State, the election is to be made by the convention of the legislature assembled under the constitution of the State, to count the votes and decide upon the election of governor and lieutenant governor, as a power necessarily existing in the legislature, and from the obligations of the State to elect senators.

Seventh. That before the adoption of the present State constitution there was a law regulating such election, and that although the same was no longer in force, the said convention did, as far as it was possible, conduct the present election according to the provisions thereof.

The undersigned, in conclusion, submits what, indeed, must be obvious to the committee, that as the witnesses and proofs to the matters above stated are only to be had in the State of Indiana, and can only properly be obtained by careful examination, and under the superintendence of himself, that it cannot be in his power to procure it at this or the approaching extra session of the United States Senate, even were he to abandon his duty as a senator, which he has no right to do, and proceed at once to the place where the testimony is to be had. He further submits, therefore, that the committee will so dispose

of the matter now as will enable him and the contestants at a future period to present the entire case fairly and fully before them.

GRAHAM N. FITCH.

FEBRUARY 25, 1857.

True copy—attest :

THOS. P. MORGAN,
Clerk to the Committee.

Mr. SPEAKER: The undersigned hereby protest against the pretended election of Jesse D. Bright and Graham N. Fitch, on this day, as senators of the State of Indiana in the Congress of the United State, the former for six years from the 4th of March next, and the latter for six years from the 4th of March, 1855, by a portion of the senators and representatives of the general assembly, for the following reasons :

1. There was no agreement of the two houses of the general assembly, by resolution or otherwise, to proceed to the appointment or election of senators in Congress on said day, or any other day of the present session of the general assembly.

2. There was no joint convention of the two houses of said general assembly on said day, nor was there any law of the State authorizing a joint convention on that or any other day for the appointment or election of United States senators, nor was there any resolution or joint resolution approved or adopted by the two houses of the general assembly, or either of them, authorizing such joint convention.

3. Said pretended joint convention was a mere assemblage of a portion of the senators and representatives of the general assembly, not in a legislative capacity, but as individuals without any authority of law, without precedence in the legislative history of the State, and having no legislative sanction; and the said senators and representatives, when convened, had no more constitutional right to elect or appoint senators than any equal number of private citizens of the State.

4. There was not a constitutional quorum of either house of the general assembly present in said pretended joint convention, there being only twenty-four senators and sixty-two representatives present; when, by the eleventh section of the fourth article of the constitution of this State, it requires two-thirds of each house to constitute a quorum to do business; and when by the law of the State the number of senators is fixed at fifty, and the number of representatives at one hundred, in said general assembly.

5. Because the undersigned, as legally elected and qualified representatives in said general assembly, have been deprived of their constitutional right to assist in the legal election of senators in the Congress of the United States by said illegal, revolutionary, and unauthorized election.

6. Because the legislature of Indiana, as such legislature, either by separate action of the two houses, or otherwise, as such legislature had no part or voice in such pretended elections, the same was :

direct violation of the third section of the first article of the Constitution of the United States, and the fourth section of the same article.

7. Because said pretended elections are wholly void.

8. Because, if said elections are held valid, such decision will destroy the legal existence of the general assembly of this State, and install in its place any mob which may see proper to take forcible possession of the house as a joint convention of the general assembly, without the concurrence of either body, the sanction of the Constitution, or authority of law.

For these and other reasons which might be named, the undersigned protest against the validity of said pretended elections.

Given under our hands, at Indianapolis, this 4th day of February, 1857.

G. D. Wagner,
William Grose,
J. W. Gordon,
J. D. Conner,
D. C. Branham,
M. P. Evans,
T. B. Slop,
M. Mercer,
J. M. Austen,
Geo. Crawford,
Wm. C. Jeffries,
R. N. Todd,
H. W. Shuman,
Thos. J. Neal,
Wm. Clapp,
Alex. H. Conner,
Geo. K. Steele,
S. B. Ward,

J. P. Williams,
G. C. Merrifield,
D. Batterton,
Elijah Vandersandt,
John Whitcomb,
A. B. Price,
John Davis,
Silas Colgrove,
Wm. Hawkins,
Robt. Boyd,
Marcus C. Smith,
A. McDonald, of Lake,
N. H. Ballenger,
Geo. Moon,
J. W. Hutchins,
J. M. La Rue,
Smith Vawter.

STATE OF INDIANA, }
Marion county. } ss:

Be it remembered, that on this 5th day of February, anno Domini 1857, personally appeared before me, the undersigned, a notary public in and for said county and State aforesaid, William Grose and George D. Wagner, and made oath that it is true, as stated in the foregoing protest, that the house of representatives of the State legislature, now in session, did not, in any way whatever, by vote, resolution, or otherwise, make any expression in favor of entering into a joint convention for the purpose of the election of United States senators; that the foregoing protest is a true copy of the original, signed by thirty-five of the members of the said house of representatives, with their genuine signatures thereto, and entered upon the journal of said house in the proceedings of this day; that at the pretended joint convention there were twenty-three State senators voting for said Jesse D. Bright and

Graham N. Fitch, and no more, and one other senator present but refusing to vote. And sixty-two of the members of the said house of representatives were present and participating in said pretended convention, sixty of whom voted for said Bright and Fitch, and no more, being less than a quorum of the said house of representatives, and less than a majority of the State senators; that these affiants are also two of said protestants and members of said house of representatives, and that the facts, as stated in said protest, are true in substance and matter of fact, to the best of the knowledge and belief of these affiants, and further they say not.

WILLIAM GROSE,
GEORGE D. WAGNER.

Witness my hand and notarial seal this fifth day of February, anno Domini 1857.

RICHD. M. HALL, [L. s.]
Notary Public.

INDIANAPOLIS, INDIANA,
January 29, 1857.

The senate being in session, Mr. Cravens, the senator from Jefferson, offered for adoption the following preamble and resolution:

Whereas, on the 12th day of January, 1857, whilst the senate was engaged in the discussion of a resolution of the house of representatives, in accordance with section 4 of article 5 of the constitution of this State, which is in the following words, to wit: "The returns of every election for governor and lieutenant governor shall be sealed up and transmitted to the seat of government, directed to the speaker of the house of representatives, who shall open and publish them in the presence of *both houses* of the general assembly;" which resolution of the house of representatives had fixed the hour of half past two o'clock for such opening and counting; *and whereas*, before any decision was had upon said resolution, and before any vote was either taken or demanded upon the same, and one half hour before the time fixed by said house resolution, the lieutenant governor and ex-officio president of the senate and governor elect arose in his place, delivered to the senate a short valedictory, at the close of which he announced in the following words: "*I now repair to the hall of the house;*" whereupon, without adjournment of the Senate, or any other action of the same in relation thereto, he, the said president, descended from the rostrum, and immediately proceeded from the senate chamber followed by a *minority* of the senate.

And whereas a majority of the fifty senators of which this body is composed, as provided by the constitution of this State, remained in session and under a call of the senate, when it was ascertained that a majority was, but a quorum of two-thirds, as provided by the constitution, was not present, a resolution embodying said facts was introduced and made part of the record of the senate.

And whereas this senate continued in session until the return of the absent members, when the aforesaid resolution, with a pending amendment, was concurred in by the senate.

And whereas it has been told to the senators, or a majority of the members of this house, that during the absence of the minority of the senators, a meeting was held in the hall of the house of representatives, at which said meeting the returns of the election for governor and lieutenant governor are said to have been opened and published, and at which said meeting, it has also been said, that the lieutenant governor, *ex-officio* president of the senate and governor elect, was inaugurated as governor.

And whereas, when the so styled inauguration and induction into office of the governor elect, the said president of the senate is also reported to have called to the chair, as presiding officer of said meeting, one of the minority senators, which senator, after the so called ceremonies of inauguration had been concluded, without authority or instructions so to do by said meeting, is said to have pronounced the *joint convention* adjourned to meet again at 2 o'clock p. m. on Monday, the 2d day of February next.

And whereas there has not been, during the present session of this general assembly, any *joint convention*, or any determination therefor, or action in relation thereto by this senate; and whereas any joint convention of the two houses of the general assembly must necessarily consist of a quorum of each house—neither house being competent to the transaction of any business in a separate and independent capacity without a quorum, which consists of two-thirds of the members elect—such competency could not be conferred or derived by any meeting of the minority of the senators with the members of the house or the house as such; and whereas it is reported that at such adjourned meeting, or so called joint convention, it is the design to elect two United States senators.

And whereas any such election, by any such unauthorized, illegal, and unprecedented meeting or body, would be inconsistent with the character of this general assembly, in violation of the constitution of this State—which does not contemplate or provide for any joint convention for any such election or purpose—insulting to this senate, and highly disrespectful to the Senate of the United States, in view of its recent decision in a like case, and disorganizing and revolutionary in its character; therefore,

Be it resolved, That this senate does disclaim any knowledge of, or participation in, any meeting or so styled joint convention for the above or any other purpose; and if at any adjourned meeting of said body it is proposed to have any election for United States senators, or other officers, or to transact any other business which it might be competent for, or the duty of this general assembly to elect or perform, this senate does hereby most solemnly and earnestly protest against any such action as wholly unauthorized by this house, without its knowledge, consent, or concurrence, and that we will here as elsewhere, now and forever, repudiate and disown such act or action as flagrantly illegal, and a fraud upon the sovereignty of the people and State of Indiana.

Mr. Tarkington moved to refer the preamble and resolutions to the Committee on the Judiciary.

Ayes 27 ; nays 20.

The question recurred on the adoption of the preamble and resolutions.

Those who voted in the affirmative were—Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—27.

Those who voted in the negative were Messrs. Drew, Fisk, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McLure, McLain, Richardson, Rugg, Slater of Dearborn, Slater of Johnson, Tarkington, Wallace, Wilson and Woods—20.

So the preamble and resolution were adopted.

STATE OF INDIANA, }
Marion County. } ss.

We, Jonathan S. Harvey, principal secretary of the senate of Indiana, and James N. Tyner, assistant secretary of the same, now in session, do solemnly and severally swear, that the annexed and foregoing is a true copy of the preamble and resolution, introduced into said senate, and the action of the senate thereon, as appears by the journal thereof, and that said journal is correct, so help us God.

JONATHAN S. HARVEY.

JAS. N. TYNER.

Subscribed and sworn to before me, George H. Chapman, a notary public in and for the county of Marion and State of Indiana, this third day of February, A. D. 1857, as witness my hand and official seal.

GEO. H. CHAPMAN, [SEAL.]
Notary Public.

We, the undersigned, senators of the State of Indiana, do hereby certify that the foregoing preamble and resolution, and action of the senate of Indiana thereon, are in all respects true as above stated.

David Crane,
J. F. Suit,
J. F. Parker,
John Green,
Isaac Kinley,
Jno. R. Craven,
Solomon Blair,
P. S. Sage,
John Weston,
J. F. Stevens,
Daniel Hill,
John T. Freeland,
Lewis Burk,
Isaac A. Rice,

Stanley Cooper,
John Thompson,
A. S. Griggs,
D. H. Crouse,
A. W. Hendry,
G. W. Chapman,
D. R. Bearss,
J. S. Bobbs,
M. H. Weir,
John Yaryan,
C. D. Murray,
S. T. Ensey,
Walter March.

February 5, 1857.

Whereas, on the second day of February, 1857, there was held in the hall of the house of representatives a meeting purporting to be composed of certain members of the general assembly, which, it is *said*, was an adjourned meeting of a so-styled joint convention referred to, and characterized, in a certain preamble and protest presented to and entered upon the journal of this Senate January 29, 1857;

And whereas said meeting neither entered upon, entertained, or did any other business than, like "the king of the French, with his forty thousand men, march up the hill and then march down again," simply assemble, and, without vote, decision, or order therefor, by the self-constituted, self-elected, or self-chosen president thereof, adjourn to meet again on the fourth day of February, without the specification of any object, reason, or design for such adjourned meeting:

And whereas, on the fourth day of February aforesaid, at the hour of 10 o'clock a. m., and whilst this senate was engaged in a regular session in the transaction of its business, the Hon. A. A. Hammond, lieutenant governor and *ex officio* president of the Senate, of his own act, did interrupt and suspend the order of business, to announce that the hour had arrived for repairing to the hall of the house to go into joint convention;

Whereupon, as on the former occasion referred to in the preamble and resolution of the aforesaid 29th January, the said lieutenant governor vacated his seat as the presiding officer of this senate, and left the senate chamber, attended by a few of the members of this body, between whom and the presiding officer there seemed to be a perfect understanding, as though both were alike moved by a common impulse—no such convention, and no reason, demand, or call for such convention being known to this senate, nor any action to which this senate has ever been a party being had for the organization of such so-called joint convention;

And whereas, when the lieutenant governor, with his attendant senators had left this chamber, it is understood that a meeting of the said lieutenant governor and senators, with a certain number of gentlemen, members of the house of representatives, in the hall of the said house of representatives, over which so-called joint convention, without election, appointment, or expressed desire so to do by the members thereof, it is said that the lieutenant governor presided;

And whereas, at said meeting, it is further reported, and by some believed to be true, that a sham, illegal, fraudulent, and disgraceful attempt at an election for two United States senators was had, which, if correctly reported, resulting as it is said to have done in the choice by such assembly, of Jesse D. Bright and Graham N. Fitch as such senators, can only be regarded as an informal expression of the profound devotion of partizan friends, for which expressive election, so significant as it was of party and personal fidelity, neither this general assembly, the laws, nor constitution of this State are in anywise responsible, neither having been consulted or made parties to the transaction in any respect or manner whatsoever;

And whereas, in order that the said lieutenant governor might avail

himself of the opportunity of assuming the right or power to preside over the deliberations of said meeting, or unauthorized joint convention, he did, without permission from this senate, leave the chair; which, it is also assumed by said lieutenant governor, is, and was an adjournment of this body, which assumption is in direct contravention of the constitution of this State—Art. IV, sec. 10, wherein it is declared that “each house when assembled shall determine its own rules of proceeding, and sit upon its own adjournment;”

And whereas any action of the president of this senate, or its members, in any such meeting as aforesaid, is, and was, in direct conflict with rule fifty-four of the standing rules of this senate, which reads as follows: “In all joint meetings of the two houses of the legislature, convened for a specific purpose, it shall be incompetent for this body, or its members, to engage in such joint meeting in the transaction of any other business than that for which they were so specifically assembled.”

No joint meeting having been agreed upon by or between the two houses of this general assembly nor any declared business or object of such assembly;

And whereas, during the time such unauthorized and unlawful meeting was engaged in such illegal election, this senate was in session, a presiding officer having been appointed *pro tem.*, until the same was adjourned by a vote of its members, as will be seen by reference to its journal;

And whereas such so called joint convention was not called into existence by any action to which this senate was a party, nor even composed of a quorum of either house of this general assembly, but deriving its powers and vitality from violence, disorder, and fraud: we do, therefore, *most solemnly and earnestly protest* against the action, doings, and resolves of said so denominated joint convention, and on behalf of the *people* and sovereignty of this State would invoke the indignation and judgment of all men, whether in authority or as citizen subjects, upon any and all such elections, *as unconstitutional, revolutionary and void*, and would further ask this senate to direct its secretary to transmit, immediately, two copies of this preamble and protest to the United States Senate, one to the president of that body, and the other to Judge Trumbull, senator from the State of Illinois.

John R. Cravens.

D. R. Bearss.

Walter March.

John Green.

Solomon Blair.

G. W. Chapman.

Isaac Kinley.

John Thompson.

A. W. Hendry.

John T. Freeland.

Stanley Cooper.

Isaac A. Rice.

James F. Suit.

James F. Parker.

Daniel Hill.

John S. Bobbs.

D. H. Crouse.

J. F. Stevens.

C. D. Murray.

Lewis Burk.

John Yaryan.

M. H. Weir.

A. S. Griggs.

David Crane.

P. S. Sage.

S. T. Ensey.

John Weston.

SENATE CHAMBER,
Indianapolis, Indiana, February 5, 1857.

I, Abram A. Hammond, lieutenant governor of the State of Indiana and *ex-officio* president of the senate, do hereby certify that the foregoing is a true and correct copy of the protest, as appears of record on the journal of the senate of the State of Indiana for the 5th day of February, A. D. 1857; and I would furthermore state, that in signing this certificate, I do not wish to be understood as certifying to any of the facts contained in said protest.

ABRAM A. HAMMOND.

STATE OF INDIANA, }
Marion county. } ss.

We, Jonathan S. Harvey, principal secretary, and James N. Tyner, assistant secretary of the senate of the State of Indiana, now in session, do solemnly swear that the annexed and foregoing is a true and correct copy of the protest, as appears of record on the journal thereof for the 5th day of February, A. D. 1857; and that the twenty-seven senators whose names appear in connexion with said protest are all members of the Indiana State senate the present session; and that the said senate has not, by resolution or otherwise, during the present session, given its assent to go into, or participate in, any joint convention for any purpose whatsoever: so help us God.

JONATHAN S. HARVEY.
JAS. N. TYNER.

[L. s.] In witness whereof, I have hereto affixed my hand and notarial seal, this sixth day of February, A. D. 1857.

RICH'D M. HALL,
Notary Public.

WEDNESDAY MORNING, February 4, 9 o'clock.

House met.—The journal was read.

Mr. Blake arose to a question of privilege, objecting to the placing on the journal of the house the protest of Mr. Gordon and thirty-eight others, representatives, from the fact that the protest is not such as is contemplated by the constitution, and also that it was couched in censorious and abusive language.

Messrs. Grose and Gordon arose to a question of privilege.

The speaker declared them severally out of order, from the fact that Mr. Blake was now speaking to a question of privilege.

The hour for the meeting of the joint convention of the two houses of the general assembly having arrived, the senate, preceded by the lieutenant governor, appeared within the hall of the house, where seats were provided for them on the right of the speaker's chair.

Upon calling the convention to order, the president, with the consent of the joint convention, appointed Solon Turman secretary thereof, who was duly sworn in as such by the Hon. Samuel Perkins, one of the judges of the supreme court, and entered upon the discharge of his duties.

The chairman addressed the convention as follows :

GENTLEMEN: Pursuant to adjournment on Monday, February 2, 1857, we are assembled in joint convention, under a provision of the constitution of the State of Indiana, and you will now proceed to choose a United States senator by a "*viva voce*" vote, to serve as such until the 4th of March, 1861.

Mr. Walpole nominated Graham N. Fitch.

Those who voted for Graham N. Fitch were—

Messrs. Alexander, Brown, Drew, Fisk, Gooding, Hargrove, Hefren, Hostetter, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater, of Dearborn, Slater, of Johnson, Tarkington, Wallace, Wilson, and Woods, of the senate.

The senator from Laporte, Mr. Weir, voted blank—1.

Messrs. Abel, Adams, Allen, Ayres, Bethell, Blake, Bowman, Branson, Brown, Bryan, Carnahan, Clark, Claypool, Conduitt, Crowe, Cullen, Davis, of Sullivan, Denby, Dobbins, Duncan, Early, Edson, Harrison, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Massey, Marvin, Modesitt, Moore, McDannel, McDonald, of Fountain, McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Ricketts, Robbins, Schermerhorn, Sherrod, Shoulders, Slicer, Smith, of Bartholomew, Stillwell, Studabaker, Taggart, Trippet, Wallace, Walpole, Wiley, Williams, of Knox, Williamson, Yater, and Mr. Speaker of the house of representative—83.

Messrs. Hayden and Wright voted for George G. Dunn—2.

Graham N. Fitch having received a majority of all the votes of the members of the general assembly of the State of Indiana, was declared by the president of the convention duly elected United States senator from the State of Indiana, to serve as such until the 4th of March, 1861.

The president then announced that the joint convention would now proceed to choose a United States senator by a *viva voce* vote, to serve as such from the 4th of March, 1857, until the 4th of March, 1863.

Senator Slater nominated Hon. Jesse D. Bright.

Those who voted for Jesse D. Bright were :

Messrs. Alexander, Brown, Drew, Fisk, Gooding, Hargrove, Hefren, Hostetter, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater, of Dearborn, Slater, of Johnston, Tarkington, Wallace, Wilson, and Woods, of the senate.

And the senator from Laporte, Mr. Weir, was present, but refused to vote for any one.

Messrs. Abel, Adams, Allen, Ayres, Bethell, Blake, Bowman, Branson, Brown, Bryan, Carnahan, Clark, Claypool, Conduitt, Crowe, Cullen, Davis, of Sullivan, Denby, Dobbins, Duncan, Early, Edson, Harrison, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Massey, Marvin, Modesitt, Moore, McDannel, McDonald, of Fountain,

McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Ricketts, Robbins, Schermerhorn, Sherrod, Shoulders, Slicer, Smith, of Bartholomew, Stillwell, Studabaker, Taggart, Trippet, Wallace, Walpole, Wiley, Williams, of Knox, Williamson, Yater, and Mr. Speaker of the house of representatives—83.

Messrs. Hayden and Wright voted for Richard W. Thompson—2.

Jesse D. Bright having received a majority of all the votes of the general assembly of the State of Indiana, was declared by the president of the joint convention duly elected United States senator from the State of Indiana, to serve as such until the 4th day of March, 1863.

The president then adjourned the joint convention, to meet in the hall of the house of representatives, on Wednesday the 11th instant, at 3 o'clock p. m.

I certify that the foregoing journal of the proceedings of the joint convention is correct.

SOLON TURMAN,
Secretary of joint convention.

On motion by Mr. Walpole, the house adjourned.

At two o'clock p. m. the house met.

Mr. Marvin, chairman of the committee on engrossed bills, made the following report:

MR. SPEAKER: The committee on engrossed bills have examined house bill No. 148, and, upon comparison with the original, find the same correctly engrossed, and direct me so to report.

Mr. Blake offered the following resolution:

Resolved, That the committee on the judiciary be directed to inquire whether the protest entered upon the journal of yesterday contains matter inexpedient or scandalous.

Mr. Walpole offered the following amendment:

Resolved, That the paper presented to this house by one of the representatives from Marion, on behalf of himself and others, purporting to be what they call a protest, be referred to a select committee of five for said committee to inquire:

1. Whether the same contains the facts?
2. Is it competent for the signers to protest against the acts specified in said paper?
3. Is it decorous towards the senate?
4. Is it truthful and decorous towards individuals referred to?
5. Is it not untruthful in the recapitulation of stated acts?
6. Is it not untruthful as to the acts of the senate and the now lieutenant governor?
7. Is there any constitutional right of a member of one branch of the general assembly to protest against the acts of a joint convention of the two houses? and said committee be instructed to report at an early day of the session.

Pending which,

On motion by Mr. Wright, the house adjourned.

STATE OF INDIANA, }
Marion county. } ss.

Be it remembered, that personally came before me the undersigned, a notary public in and for said county and State aforesaid, William Grose, and made oath that he is a member of the house of representatives, of which the foregoing transcript purports to be a copy of the proceedings of the same on Wednesday, the 4th of February, 1857. That the same has been furnished to him by the officers of the said house as a true transcript of the proceedings of said house on the said 4th day of February, 1857, and which he believes to be a true copy of the journal of the house of the proceeding as now recorded and on file in the possession of the officers of said house, and further says not.

WILLIAM GROSE.

Sworn and subscribed to before me.

In witness whereof I hereunto set my hand and seal notarial, this
 [L. s.] 12th day of February, 1857.

RICHARD M. HALL,
Notary Public.

TRANSCRIPT OF SENATE JOURNAL, MONDAY, JANUARY 12, 1857.—JAMES N. TYNER, ASSISTANT SECRETARY.

MONDAY MORNING, 9 o'clock,
January 12, 1857.

The senate met.

The journal of Saturday was read.

By unanimous consent of the senate the rules were suspended, and Mr. Gooding, chairman of a select committee, made the following report:

Mr. PRESIDENT: The select committee appointed to procure a minister of the Gospel to open the session with prayer, report that they have waited upon Rev. T. A. Mills, and have obtained his consent to open the senate with prayer *instantly*.

Whereupon, the Rev. T. A. Mills came forward and addressed the Throne of Grace.

Petitions.

By Mr. Hendry:

A petition from sundry citizens of Steuben county, praying the amendment of section 3d of an act regulating the duties of county surveyors.

Which, on motion by Mr. Hendry,

Was referred to the committee on county and township business.

Resolutions.

On motion by Mr. Ensey,

Resolved, That the committee on the judiciary be requested to in-

quire into the expediency of amending the interest law so as to allow the collection of ten per cent. interest per annum on special contract.

On motion by Mr. Tarkington,

Resolved, That the auditor of State be requested to furnish the senate, at his earliest convenience, with the amount of funds on mortgages belonging to the State University upon which the interest is annually paid. The amount of suspended debt, (or lands forfeited to the State for the use of said university;) the amount of the unpaid purchase money on lands in the counties of Gibson and Monroe, and the amount of the annual expense of handling said funds for the use of the university.

On motion by Mr. Suit,

Resolved, That the committee on the judiciary be instructed to inquire as to the right by which Leroy Woods holds his seat as senator from the county of Clarke; and whether he has been elected, appointed to, or acted in, any other official capacity, or held or received the emoluments of any other lucrative office, or office of trust and profit, since his election to the office of senator.

That said committee have power to send for persons and papers, and that they report the facts to this senate as soon as possible.

On motion by Mr. Hostetter,

Resolved, That his excellency the governor be requested to lay before this body any information in his possession in relation to the fraudulent means made use of, either by offers of stock, money, or otherwise, made to members, and to whom made, and whether any such offer was accepted as a consideration for his support to the bill constituting a bank and branches, passed at the session of 1855, and by whom made; and also to whom such consideration was given; if, in his judgment, it is not inconsistent with the public good.

On motion by Mr. Wallace,

Resolved, That the judiciary committee be instructed to examine whether there is any statute of this State conferring upon a judge of the supreme court authority to administer oaths, except while sitting as a member of said court; and if so, to cite in their report the volume, page, and section, in which such authority is found; and that they be further instructed to report without delay.

On motion by Mr. Parker,

Resolved, That the auditor and treasurer of state be requested to communicate to the senate any information which they may be in possession of relative to frauds alleged to have been committed by certain county officers in the management and sale of swamp lands.

Mr. Wallace offered the following preamble and resolution:

Whereas, on Friday last, upon the reception of the message from the house, inviting the senate into the hall of the house of representatives, to hear the annual message of his excellency Governor Wright, the senate adjourned on the motion of the senator from Howard, (Mr. Murray,) without action in response to the invitation, whereupon the democratic senators proceeded alone into the house, inside the bar, and heard the message; wherefore, to avoid a similar discourtesy—

Resolved, That when the invitation is received from the house to-day informing the senate that the house is ready to go into joint convention to witness the opening and publication of the returns of the election of governor and lieutenant governor, according to the requirements of the constitution, that the senate do forthwith proceed in a body to the house, for the proper discharge of that duty, without a previous adjournment.

Mr. Freeland moved to lay the preamble and resolution on the table.

The ayes and noes being demanded by senators Johnson and Fisk, Those who voted in the *affirmative* were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—26.

Those who voted in the *negative* were—

Messrs. Brown, Drew, Fisk, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Sage, Slater, (of Dearborn,) Tarkington, Wallace, Wilson, and Woods—21.

So the *motion* to lay on the table *was agreed to*.

The following resolution was offered by Mr. Suit:

Resolved, That the thanks of the Senate be, and they are hereby, tendered to Lieutenant Governor Willard for the able, impartial, prompt and efficient, manner in which he has presided over its deliberations and conducted its business.

Which was unanimously agreed to.

Bills introduced.

By unanimous consent, Mr. Weir introduced—

Senate bill No. 5. An act to amend the 9th section of an act entitled "An act providing for the election and qualification of justices of the peace, and defining their qualifications and duties in civil cases," approved June 9, 1852;

Which was read a first time, and passed to a second reading.

By unanimous consent, Mr. Stevens introduced—

Senate bill No. 6. An act to prevent illegal voting, and affixing penalty therefor, and to provide for the registry of the names of voters;

Which was read a first time, and passed to a second reading.

By unanimous consent, Mr. Miller introduced—

Senate bill No. 7. A bill to provide for the granting of writs of *habeas corpus*, injunctions, and restraining orders in certain cases;

Which was read a first time, and passed to a second reading.

By unanimous consent, Mr. Griggs introduced—

Senate bill No. 8. An act to amend section 3 of an act entitled "An act to amend the 1st and 4th sections of an act entitled an act authorizing recorders to make out complete or general indexes to records of deeds and mortgages, and to procure and use seals," approved February 14, 1855;

Which was read a first time, and passed to a second reading.

By unanimous consent, Mr. Drew introduced—

Senate bill No. 9. An act defining embezzlement, and prescribing the punishment therefor;

Which was read a first time, and passed to a second reading.

By unanimous consent, Mr. Hargrove introduced—

Senate bill No. 10. A bill to amend the 433d section of an act entitled "An act to revise, simplify, and abridge the rules, practice, pleadings, and forms in civil cases in the courts of this State; to abolish distinct forms of action at law; and to provide for the administration of justice, in a uniform mode of pleading and practice, without distinction between law and equity," approved June 18, 1852;

Which was read the first time, and passed to a second reading.

Orders of the day—Senate bills on third reading.

Senate bill No. 1. A bill to apportion senators and representatives for the next four years,

Was read a third time.

Mr. Tarkington moved to refer the bill to a select committee of three, with the following instructions:

Amend by giving Monroe one senator, and Owen and Clay one senator jointly.

Mr. Hostetler moved to further instruct the committee, as follows:

Amend so as to give Lawrence and Jackson each one senator.

Mr. Rugg moved to further instruct the committee, as follows:

Amend 14th line of printed bill, section 1, by striking out the words "Adams and," and strike out also, after the word "Randolph," the words "and Jay," and insert the words "one, Adams, Jay, and Blackford, one."

Amend, also, the 15th line of section 2d, by striking out after the word "Adams" the word "and," and insert "one;" and after the word "Allen," strike out "three jointly," and insert "two."

Mr. Drew moved to further instruct the committee, as follows:

To amend section 2d, line 2d, by inserting "Posey two."

Mr. Green moved to further instruct the committee, as follows:

To so amend section 2d as to give Grant "one," and Howard and Tipton one.

Mr. Sage moved to further instruct the committee, as follows:

To so amend said bill as to give Ohio and Switzerland counties two representatives jointly.

A division of the question being had,

The question being, Shall the bill be recommitted to said select committee?

Mr. Johnston moved to further instruct said committee, as follows:

To amend by striking out the 3d section and inserting the following:

"That this act take effect and be in force from and after its passage and publication."

Mr. Weir moved that the motion to recommit to select committee be laid on the table.

The ayes and noes being demanded by senators Johnston and Slater of Dearbon,

Those who voted in the affirmative were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Stevens, Suit, Sage, Thompson, Weir, Weston and Yaryan—27.

Those who voted in the negative were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, Wilson, and Woods—21.

So the motion to lay the motion to recommit on the table was agreed to.

Mr. Tarkington moved to lay the bill on the table.

The ayes and noes being demanded by senators Freeland and Weir, Those who voted in the affirmative were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Sage, Slater of Dearborn, Tarkington, Wallace, Wilson and Woods—22.

Those who voted in the negative were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—26.

So the motion to lay the bill on the table was *not agreed to*.

Mr. Gooding moved to postpone the further consideration of the bill till Monday next at 2 o'clock p. m.

The ayes and noes being demanded by Senators Weir and Green, Those who voted in the affirmative were,

Messrs. Brown, Drew, Fish, Gooding, Hargrove, Heffren, Hostetler, Johnson, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Sage, Slater, of Dearborn, Tarkington, Wallace, Wilson, and Woods—22.

Those who voted in the negative were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—26.

So the motion to postpone was not agreed to.

Mr. Bearss moved the previous question; which was seconded by the senate.

The question being, Shall the main question be now put?

Which was agreed to.

The question being, Shall the bill pass?

Those who voted in the affirmative were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, and Yanyan—27.

Those who voted in the negative were,

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain,

Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, Wilson, and Woods—21.

So the bill passed.

Ordered, That the secretary inform the house thereof.

House bills on third reading.

House bill No. 1. An act to regulate the salary of the governor, and to repeal all former acts relating thereto,

Was, with the engrossed amendment of the senate thereto, read a third time.

Mr. Murray moved to lay the bill, and engrossed amendments thereto, on the table.

Which was agreed to.

The president laid before the senate the following communication and accompanying report :

INDIANAPOLIS, *January 12, 1857.*

DEAR SIR: Please lay before the senate my annual report, and oblige, yours, respectfully,

JOHN M. LORD,
Agent of State.

, The PRESIDENT of the Senate.

Which, on motion by Mr. Brown, was laid upon the table, and 500 copies ordered to be printed for the use of the senate.

The president laid before the senate the following communication and accompanying report :

INSTITUTION FOR DEAF AND DUMB,
Indianapolis, January 12, 1857.

SIR: Please lay before the senate the 13th annual report of the trustees and superintendent of this institution.

Very respectfully,

THOMAS MCINTIRE,
Superintendent.

Hon. A. P. WILLARD,
President of the Senate.

Which, on motion by Mr. Brown, was laid on the table, and 500 copies ordered to be printed for the use of the senate.

The president laid before the senate the following communication and accompanying report :

INDIANA HOSPITAL FOR THE INSANE,
Indianapolis, January 12, 1857.

SIR: Please lay before the senate the annual report of the board of commissioners and superintendent of this institution.

Very respectfully,

JAMES S. ATHON,
Superintendent.

Hon. A. P. WILLARD,
President of the Senate.

Which, on motion by Mr. Brown, was laid on the table, and 500 copies ordered to be printed for the use of the Senate.

By unanimous consent, Mr. Cravens offered the following resolution:

Resolved, That when the senate adjourns, it adjourn to 1 o'clock p. m.

Which was adopted.

On motion by Mr. Murray, the following message from the house was taken up:

A message from the house by Mr. Shook, assistant clerk:

Mr. President: I am directed by the house of representatives to inform the senate that the house have passed the following resolution thereof:

Resolved, That the senate be invited to attend in the hall of the house of representatives at half past two o'clock this afternoon, to open and publish the returns of the election for governor and lieutenant governor, as required by the fourth section of the fifth article of the constitution of the State of Indiana, in which the concurrence of the senate is respectfully requested.

Pending which,

The senate adjourned till 1 o'clock p. m.

1 O'CLOCK, P. M.

The senate met.

On motion by Mr. Weir,

A call of the senate was ordered.

The secretary proceeded to the call, when it appeared that the following senators were absent:

Messrs. Alexander, Drew, Hill, Mathes, Miller, McCleary, Rugg, and Slater, of Johnson—8.

On motion by Mr. Brown,

Mr. Alexander was excused from the call.

On motion by Mr. Sage,

Mr. Alexander was excused from all former calls of the senate during the present session.

On motion by Mr. Gooding,

A further call of the senate was dispensed with.

Mr. March offered the following amendment to the resolution contained in the house message, pending at adjournment:

Amend by striking out "two and a half o'clock," and inserting "three o'clock."

Also, add the following:

"That in said joint convention no other business shall be transacted except that of opening, counting, and publishing the returns of votes for governor and lieutenant governor, witnessing the inauguration, and the administration of the oaths of office; and when that is done, such joint convention shall stand adjourned *sine die*, without motion."

The president here laid before the senate the following communication:

HALL OF THE HOUSE OF REPRESENTATIVES,
Indianapolis, January 12, 1857.

SIR: Please lay before the senate, over which you preside, the following communication.

BALLARD SMITH,
Speaker of the House of Representatives.

Hon. A. P. WILLARD,
President of the Senate of Indiana.

HALL OF THE HOUSE OF REPRESENTATIVES,
Indianapolis, January 12, 1857.

GENTLEMEN OF THE SENATE OF INDIANA: The constitution of the State devolves upon the undersigned the duty of "opening and publishing the election returns for governor and lieutenant governor" of the State in the presence of both houses of the general assembly.

As the terms of office of those functionaries begin on this day, by appointment of the constitution, I intend to perform that duty in the hall of the house of representatives *instantly*, and respectfully invite you to be present with the house of representatives now in session.

BALLARD SMITH,
Speaker of the House of Representatives.

Pending the motion of Mr. March to amend the resolution, contained in the message from the house, under consideration, the president addressed the senate, announcing that his connexion with the senate, as their presiding officer, had terminated, and closing his remarks at five minutes before two o'clock p. m.

At twenty-three minutes after two o'clock p. m.,

Mr. Cravens moved a call of the senate; which was agreed to.

The secretary proceeded to the call, when it appeared that the following senators were absent:

Messrs. Brown, Drew, Fisk, Freeland, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Parker, Richardson, Rugg, Sage, Slater of Dearborn, Slater of Johnson, Tarkington, Wallace, Weston, Wilson, and Woods—26.

Mr. Cravens offered the following resolution:

Resolved, That the hour of half-past two o'clock has arrived, and no quorum being present, the senate cannot entertain any question upon the resolution of the house inviting the senate to participate with the house in witnessing a count of the vote for governor and lieutenant governor and the ceremonies of inauguration, and that this resolution be placed upon the journal of the senate.

No action was taken on the resolution for want of a quorum.

The Hon. Abram A. Hammond, the incoming lieutenant governor of the State of Indiana, now appeared in the chair as the president of the senate, and addressed the senate as follows:

SENATORS: By the voice of the people of Indiana, it is made my duty to preside over the deliberations of this honorable senate.

Before entering upon the discharge of this duty, permit me to say that I do so with but a single purpose, and that is so to discharge that duty that you may be enabled the more speedily to complete the legislation of the country.

With the law governing the action of legislative bodies I am not familiar. But I find consolation in the fact that I am surrounded by senators whose wisdom and experience will enable them by their counsels to aid me in correctly deciding all questions of order that may arise in the course of your deliberations, and I respectfully ask of you that counsel and aid. With the hope that your labor may result to the benefit and advancement of Indiana, I take the chair as your presiding officer.

After which, on motion by Mr. Cravens,

The further call of the senate was suspended.

Mr. Slater moved that the senate adjourn. The yeas and nays being demanded by five senators,

Those who voted in the *affirmative* were—

Messrs. Brown, Drew, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, and Wilson—18.

Those who voted in the *negative* were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Fisk, Freeland, Gooding, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, Woods, and Yaryan—30.

So the motion to adjourn did not prevail.

Mr. Tarkington moved that the pending amendment to the resolution contained in the message from the house be laid on the table.

The ayes and noes being demanded by Senators Gooding and Wallace,

Those who voted in the *affirmative* were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, Wilson, and Woods—21.

Those who voted in the *negative* were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—27.

So the motion to lay on the table did not prevail.

Mr. Gooding moved to indefinitely postpone the further consideration of the amendment.

The ayes and noes being demanded by Senators Weir and March,

Those who voted in the *affirmative* were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, Wilson, and Woods—21.

Those who voted in the negative were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—27.

So the motion to indefinitely postpone did not prevail.

Mr. McLain moved to indefinitely postpone the further consideration of the resolution and pending amendment.

The ayes and noes being demanded by Senators March and Gooding, Those who voted in the affirmative were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, Wilson, and Woods—21.

Those who voted in the *negative* were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—27.

So the motion to indefinitely postpone *did not prevail*.

Mr. Heffren moved that the senate adjourn.

The ayes and noes being demanded by Senators March and Yargan, Those who voted in the affirmative were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, Miller, McClure, McLain, Richardson, and Wilson—15.

Those who voted in the *negative* were—

Messrs. Bearss, Bobbs, Blair, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Slater of Dearborn, Stevens, Suit, Thompson, Wallace, Weir, Weston, Woods, and Yaryan—30.

So the motion to adjourn did not prevail.

Mr. Slater, of Dearborn, moved to reconsider the vote on the motion to adjourn.

Mr. Yaryan moved to lay the motion to reconsider on the table.

The ayes and noes being demanded by Senators Cravens and Weir, Those who voted in the affirmative were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, Woods, and Yaryan—27.

Those who voted in the negative were—

Messrs. Brown, Drew, Fisk, Gooding, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, McCleary, McClure, McLain, Richardson, Rugg, Slater of Dearborn, Tarkington, Wallace, and Wilson—19.

So the motion to lay the motion to reconsider on the table was agreed to.

The question recurring on the adoption of the resolution contained in the message from the house, with the pending amendment,

The ayes and noes were demanded by two senators.

Those who voted in the affirmative were—

Messrs. Bearss, Blair, Bobbs, Chapman, Cooper, Crane, Cravens, Crouse, Ensey, Freeland, Green, Griggs, Hendry, Hill, Kinley, March, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, Woods, and Yaryan—27.

Those who voted in the *negative* were—

Messrs. Drew, Fisk, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, McCleary, McClure, McLain, Richardson, Rugg, Slater, of Dearborn, Wallace, and Wilson—16.

So the resolution as amended was concurred in.

Ordered, That the secretary inform the house thereof.

On motion by Mr. Cravens, the senate adjourned until to-morrow morning, at 9 o'clock a. m.

B.

STATE OF INDIANA, }
County of Marion, } ss.

Be it remembered, that, on this the 14th day of February, A. D. 1857, personally came before me, a notary public in and for the county aforesaid, Jonathan S. Harvey, principal secretary, and James N. Tyner, assistant secretary, of the senate of the State of Indiana, now in session, who, being by me duly sworn according to law, depose and say : That the foregoing is a true and correct transcript of the journal of the said senate for the 12th day of January, A. D. 1857 ; that it is a true transcript of the proceedings of the said senate on the said 12th day of January, A. D. 1857 ; that the said senate did not, as the journal correctly shows, go into the hall of the house of representatives of the State of Indiana on the said 12th day of January, A. D. 1857 ; that the said senate has not, at any time during the present session, gone into the hall of the said house for any purpose whatever ; and that the said house has not sent to the said senate, nor has the said senate sent to the said house, any resolution proposing to go into, or any invitation to go into, any joint convention for the election of United States senators, or a United States senator, at any time during the present session of the general assembly of the State aforesaid ; and that no election has been held by the two houses of the said general assembly for United States senators, or a United States senator, or any other officer elected by the concurrence of the two houses thereof, at any time during the present session. All of which appears by a complete and careful examination of the journal of the said senate for the entire session thereof.

J. S. HARVEY.

JAS. N. TYNER.

Subscribed and sworn to before me, this 14th day of February, A. D. 1857.

[L. s.] In witness whereof, I hereunto set my hand and notarial seal, at the city of Indianapolis.

RICHARD M. HALL,
Notary Public.

C.

Affidavit of three Senators who were part of the twenty-six found absent on a call of the Senate, January 12, 1857.

STATE OF INDIANA, }
Marion County, } ss.

Be it remembered, that, on this the fourteenth day of February, A. D. 1857, personally appeared before me, R. M. Hall, a notary public of the county aforesaid, John T. Freeland, P. S. Sage, and John Weston, who, being duly sworn, depose and say: That they now are, and have been during the present session, senators of the State of Indiana, and holding their seats as such; that on the twelfth day of January last past, at the time a pretended joint convention was being held in the hall of the house of representatives, they were present in the house, having gone there out of mere curiosity to witness the ceremonies of inauguration; that they were not there in the capacity of senators, for the purpose of participating in any way in said convention, nor did they in any manner take part in the action thereof.

They further depose and say, that they did not then, nor do they now, recognize the legality of said joint convention; that they never have, at any time or in any way, given their assent as senators to go into a joint convention of the two houses of the general assembly during the present session of the legislature.

And further they say not.

JOHN T. FREELAND.
P. S. SAGE.
JOHN WESTON.

Subscribed and sworn to before me, this 14th day of February, A. D. 1857.

[L. S.] In witness whereof, I hereunto set my hand and notarial seal,
at the city of Indianapolis.

RICHARD M. HALL,
Notary Public.

D.

TRANSCRIPT OF SENATE JOURNAL, MONDAY, FEBRUARY 2, 1857—JAMES E TYNER, ASSISTANT SECRETARY.

MONDAY, 1 o'clock p. m., *February 2, 1857.*

The senate met. The journal of Friday was read.

The president laid before the senate the following communication:

INSTITUTION FOR THE DEAF AND DUMB,
Indianapolis, Indiana, January 31, 1857.

SIR: Please announce to the members of the senate that, in obedience to a resolution passed by the house of representatives January the 28th instant, inviting me to give before the members of the general assembly an exhibition of the proficiency of the pupils under my

care, I shall be happy to perform that duty, and that the exhibition will take place at the Masonic Hall, on Friday evening, February 13th, 1857.

Very respectfully,

T. McINTIRE, *Superintendent.*

Hon. A. A. HAMMOND,
President of the senate.

Which was laid on the table.

The president laid before the senate the report of the attorney general in relation to the claim of Moorehead, Hall & Co. against the State of Indiana.

Pending the reading of which by the secretary, the president left the chair.

On motion by Mr. Griggs, Senator Burk was called to the chair as president *pro tem*.

On motion by Mr. Cravens, the rules were suspended, and the majority report of the committee on the judiciary, in reference to the right by which the Hon. Le Roy Woods, senator from the county of Clarke, holds his seat as such senator, was taken from the table.

The secretary read the following resolution contained in said report, viz:

“*Resolved*, That Le Roy Woods, by accepting of the office of moral instructor for the State's prison, discharging its duties, and receiving the emoluments thereof since his election as a senator from the county of Clarke, has vacated his office of senator, and he is not entitled to a seat in the senate.”

On motion by Mr. Cravens, the report was concurred in, and the resolution adopted.

On motion by Mr. Griggs, the senate adjourned.

STATE OF INDIANA, }
County of Marion, } ss.

Be it remembered, that, on this the 14th day of February, A. D. 1857, personally appeared before me, a notary public for the county aforesaid, Jonathan S. Harvey, principal secretary, and James N. Tyner, assistant secretary of the senate of the State of Indiana, now in session, who, being by me duly sworn according to law, depose and say, that the foregoing is a correct and true transcript of the journal of the said senate for the 2d day of February, A. D. 1857, and that it is a true transcript of the proceedings of the said senate on the said 2d day of February, A. D. 1857.

J. S. HARVEY.
JAS. N. TYNER.

Subscribed and sworn to before me. In witness whereof, I hereunto affix my hand and notarial seal, this 14th day of February,
[L. s.] 1857.

RICHARD M. HALL, *Notary Public.*

E.

TRANSCRIPT OF SENATE JOURNAL, IN FULL, FOR WEDNESDAY, FEBRUARY 4,
1857.—JAMES N. TYNER ASSISTANT SECRETARY.

WEDNESDAY MORNING, 9 O'CLOCK, *February 4, 1857.*

The senate met.

The journal of the preceding day was read.

Mr. Heffren moved that the secretary be directed to insert the name of Mr. Woods in the journal of yesterday wherever it should occur in the votes by ayes and noes.

Which motion being entertained by the president, Senators Cravens and Bearss appealed from the decision of the chair, as follows, viz:

"Upon the motion made by the senator from Washington to correct the journal, objection was made that the said motion was out of order; the president decided that the said motion was in order; from which decision we respectfully appeal to the senate."

Pending the discussion on which,

The president left the chair.

On motion by Mr. Suit,

Senator Burk was called to the chair, as president *pro tem.*

The following protest was presented by Mr. Wallace:

"The undersigned protest against any action by a portion of the senators, not a quorum, (the president being absent,) in the joint convention, as not being a senate."

LEN. WALLACE.

On motion by Mr. Wallace,

A call of the senate was directed.

Before proceeding to which,

On motion by Mr. Suit,

The senate adjourned at five minutes after 10 o'clock a. m.

2 O'CLOCK, P. M.

The senate met.

The pending question at adjournment being the consideration of the appeal of Senators Cravens and Bearss,

By the unanimous consent of the Senate,

Mr. Heffren withdrew the motion to amend, and Messrs. Cravens and Bearss withdrew the appeal.

The question on the resolution offered by the senator from Washington, directing the secretary to strike out a portion of the journal of the 2d instant, being before the senate,

On motion by Mr. Heffren,

The resolution was laid on the table.

Mr. Griggs moved that the senate now adjourn.

The ayes and noes being demanded by five senators,

Those who voted in the affirmative were—

Messrs. Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Drew, Griggs, Heffren, McLain, Richardson, Rice, Rugg, Slater of Dearborn, Suit, and Tarkington—17.

Those who voted in the negative were—

Messrs. Bearss, Blair, Fisk, Gooding, Green, Hargrove, Hendry, Hill, Hostetler, Johnston, Kinley, March, Mansfield, Murray, McCleary, McClure, Sage, Slater of Johnson, Stevens, Thompson, Wallace, Weir, Weston, Wilson, and Yaryan—25.

So the motion to adjourn did not prevail.

The question on the resolution offered yesterday by the senator from Laporte, to adjourn the senate to Thursday morning at 9 o'clock, being before the Senate,

On motion by Mr. Suit,

The resolution was laid upon the table.

Petitions, memorials, and remittances.

Mr. Burk introduced a petition from sundry citizens and mechanics of the county of Wayne, praying an amendment of the law regulating mechanics' liens;

Which, on motion by Mr. Burk, was referred to a select committee of three.

The president appointed Senators Burk, Bobbs, and Stevens said select committee.

Mr. Kinley introduced a memorial from the Religious Society of Anti-Slavery Friends, praying a repeal of the law prohibiting negroes from being witnesses in courts of justice, in cases wherein white persons are interested; also, a repeal of the law prohibiting negroes from participating in the benefits of the common school fund.

Mr. Kinley moved to refer the memorial to the committee on the judiciary.

Mr. Wallace moved to lay the motion to refer on the table.

The ayes and noes being demanded by senators Hendry and March,

Those who voted in the affirmative were—

Messrs. Alexander, Brown, Drew, Fisk, Hargrove, Heffren, Hostetler, Johnston, Mansfield, Mathes, McCleary, McClue, McLain, Richardson, Rugg, Slater, (of Dearborn,) Tarkington, and Wallace—17.

Those who voted in the negative were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Freeland, Gooding, Green, Griggs, Hendry, Hill, Kinley, March, Miller, Murray, Parker, Rice, Sage, Slater, (of Johnson,) Stevens, Suit, Thompson, Weir, Weston, Wilson, and Yaryan—30.

So the motion to lay on the table did not prevail.

The question recurred on the motion to refer the memorial to the committee on the judiciary.

The ayes and noes being demanded by Senators Wallace and Drew,

Those who voted in the affirmative were—

Messrs. Bearss, Blair, Bobbs, Burk, Chapman, Cooper, Crane, Cravens, Crouse, Freeland, Gooding, Green, Griggs, Hendry, Hill, Kinley, March, Miller, Murray, Parker, Rice, Sage, Stevens, Suit, Thompson, Weir, Weston, and Yaryan—28.

Those who voted in the negative were—

Messrs. Alexander, Brown, Drew, Fisk, Hargrove, Heffren, Hos-

tetter, Johnston, Mansfield, Mathes, McCleary, McClure, McLain, Richardson, Rugg, Slater, (of Dearborn,) Slater, (of Johnson,) Tarkington, and Wallace—19.

So the memorial was referred.

Mr. Tarkington introduced the following minority report from the Committee on Elections :

[Owing to its great length, the report is omitted.]

Which, on motion by Mr. Suit, was laid on the table.

On motion by Mr. Suit, the report of the attorney general in relation to the claim of Morehead, Hall & Co., presented to the senate on the 2d instant, was laid on the table.

Reports from standing committees.

Mr. Murray, chairman of the committee on the judiciary, made the following report:

MR. PRESIDENT: The committee on the judiciary, to whom was referred a petition of certain members of the German Baptist church, praying that the law regulating marriages be so changed as to give members of the said society the right to solemnize marriages according to their religious opinions, have had the same under consideration, and, deeming the prayer such an one as should be granted, have directed me to report the following bill, and respectfully recommend its passage:

Senate bill No. 58. A bill to amend the third section of an act entitled "An act declaratory of the law regulating marriages and enforcing the provisions thereof by proper penalties," approved March 5, 1852, contained in the foregoing report;

Was read a first time, and passed to a second reading.

Mr. Yaryan, from the committee on the judiciary, made the following report:

MR. PRESIDENT: The committee on the judiciary, to whom was referred a resolution of the senate instructing them to "inquire whether, in their opinion, there is any law now in force in this State making the State liable for the redemption of the circulation of any of the free banks of this State," have had the same under consideration, and, without being able to come to any definite opinion, ask to be discharged from the further consideration of the subject;

Which was concurred in.

Mr. Suit, from the committee on the judiciary, made the following report:

MR. PRESIDENT: The committee on the judiciary, to whom was referred a resolution of the Senate directing them to "inquire if any legislation is necessary to enable naturalized citizens of the United States to inherit real estate or other property descending or bequeathed to them in any foreign countries, with leave to report by bill or otherwise," have had this subject under consideration, and directed me to report that they do not consider such legislation necessary, and ask to be discharged from the further investigation of the same.

On motion by Mr. Suit, the report and resolution were recommitted to the committee on the judiciary.

Mr. Hendry, from the committee on the judiciary, made the following report:

Mr. PRESIDENT: The committee on the judiciary, to whom was referred senate bill No. 46, "An act to cure defects in the certificates of acknowledgment to conveyances of real estate, and in the record of such acknowledgments in certain cases therein named," have had the same under consideration, and have directed me to report that they deem legislation on the subject inexpedient, and ask to be discharged from its further consideration;

Which was concurred in.

Senate bill No. 2. A bill to amend the 18th and 19th sections of an act entitled "An act prescribing the powers and duties of justices of the peace in State prosecutions," approved May 29, 1852; reported from the committee on the judiciary several days ago, and read a first time, then was ordered to be engrossed.

Mr. Slater, of Johnston, from the committee on the judiciary, made the following report:

Mr. PRESIDENT: The committee on the judiciary, to whom was referred senate bill No. 28, "A bill to enable assignees of school land certificates to obtain deeds when the assignments have not been acknowledged," have had the same under consideration, and have directed me to report it back with the following amendment, and when so amended, they respectfully recommend its passage.

Amend, by striking out the second section of the bill.

The amendment was adopted and the bill ordered to be engrossed.

On motion by Mr. Yaryan, the vote ordering senate bill No. 52 to be engrossed was reconsidered.

On motion by Mr. Yaryan, the bill was amended by striking therefrom the emergency clause.

Mr. Freeland moved to reconsider the vote on the amendment to the bill formerly adopted; which was not agreed to.

The bill was ordered to be engrossed, and read a third time on tomorrow.

Mr. Griggs, from the committee on the judiciary, made the following report:

Mr. PRESIDENT: The committee on the judiciary, to whom was referred a resolution of the senate, instructing them to "inquire into the expediency of abolishing the court of common pleas," &c., have directed me to report the same back, and ask that it be referred to the committee on the organization of courts;

Which was concurred in.

Mr. Murray, chairman of the committee on the judiciary, made the following report:

Mr. PRESIDENT: The committee on the judiciary, to whom was referred senate bill No. 37, "A bill to amend the first section of an act entitled an act to amend the charter of the Indianapolis and Bellefontaine Railroad Company," passed January, 1850, have had the same under consideration, and have directed me to report it back without amendment, and respectfully recommend its passage.

The report was concurred in and the bill ordered to be engrossed.

Reports from select committees.

Mr. Miller, from a select committee, made the following report:

Mr. PRESIDENT: The select committee to whom was referred house bill No. 26, "A bill to amend the 8th section of an act providing for the election, and prescribing certain duties of county surveyors," approved January 17, 1852, have had the same under consideration, and are unanimous in the opinion that said bill ought not to pass, and therefore recommend that it be laid upon the table.

The report was concurred in and the bill laid on the table.

Reports from joint select committees.

Mr. Burk, chairman of a joint select committee, made the following report:

[State printer will here insert report.]

On motion by Mr. Burke, the report was laid on the table and one thousand copies ordered to be printed for the use of the senate.

Mr. Weir offered the following preamble and resolution:

Whereas it is right and proper that the true condition of the office of auditor of state should be made known to the public, and that it should be subjected to strict scrutiny, inasmuch as the affairs of said office are said to be in a complicated condition: Therefore, be it

Resolved, That Douglass McGuire, E. U. H. Ellis, and John P. Dunn, all ex-auditors of this State, be and are hereby appointed a committee to examine thoroughly the affairs of said office, to see that all vouchers are properly classified and filed, to see that all warrants correspond with the authenticated vouchers, to examine specially the condition of the bank deposits, as to the amount of the issues, the securities deposited, the amount of redemptions, and upon actual count of the circulating paper returned to said office, to destroy the same, and enter the amount on record, properly classified as to date and denomination, which count shall be conclusive against any bank or individual claimant, or any other claimants: *Provided*, That notice shall be given to such bank or claimant, if known to said committee, to appear at such counting, such notice stating the time.

Resolved, That in case of refusal or neglect to serve for any cause whatever, a majority of said committee shall be competent to discharge the duties herein required.

Resolved, That said committee shall make full report of all their doings and proceedings to the senate, at the next meeting of the legislature in 1859, and shall receive for compensation such sum as may be just and reasonable, to be certified by the chairman of said committee.

Which, on motion by Mr. Yaryan, was laid on the table.

On motion by Mr. Cravens,

Resolved, That the committee on temperance be directed, if, in their judgment, it is expedient, to incorporate in any bill which they may prepare and report on that subject, a provision prohibiting any one

engaged in the traffic of ardent spirits from selling, giving, or procuring to be sold or given to any minor child, malt, vinous, or spirituous liquor or liquors, under a penalty of five hundred dollars, and imprisonment in the State's prison not less than six nor more than eighteen months; and, also, making the party so offending liable to the parent, guardian, or master of such minor child, ward, or apprentice, in a civil action in the sum of — dollars, to be recovered in any court of competent jurisdiction.

On motion by Mr. Weir,

Resolved, That the select committee, to whom senate bill No. 42 was referred, be requested to report their doings thereon, as soon as convenient.

On motion by Mr. Heffren,

Resolved, That the committee on finance be requested to inquire into and report upon the expediency of allowing David Patton his expenses paid out in pursuing Francis M. Lemmon, a fugitive from justice from the county of Washington, and capturing and lodging him in the proper jail for trial.

On motion by Mr. Weir,

Resolved, That a committee of one from each congressional district be appointed to examine and report to this body the expediency of erecting a building for the use of the state officers, as offices, in compliance with the recommendation in the governor's message.

On motion by Mr. Heffren,

The senate adjourned.

STATE OF INDIANA, }
County of Marion. } ss:

Be it remembered, that on this the 14th day of February, A. D. 1857, personally appeared before me, a notary public in and for the county aforesaid, Jonathan S. Harvey, principal secretary, and James N. Tyner, assistant secretary of the senate of the State of Indiana, now in session, who, being by me duly sworn according to law, depose and say, that the foregoing is a true and correct transcript of the journal of the said senate for the 4th day of February, A. D. 1857, and that it is a true transcript of the proceedings of the said Senate on the said 4th day of February, A. D. 1857.

J. S. HARVEY.
JAS. N. TYNER.

Subscribed and sworn to before me—

In witness whereof, I hereunto affix my hand and notarial seal this
[L. s.] 14th day of February, A. D. 1857.

RICHARD W. HALL,
Notary Public.

F.

Protest of thirty-six representatives against the correctness of the record of the alleged joint convention which elected United States senators. Attested by the assistant clerk of the house.

We, the undersigned, members of the House of Representatives of the State of Indiana, now in session, do most solemnly enter our protest to the following entry upon the journal of the house, which appears in connexion with its proceedings on the 4th day of February, 1857, viz:

The hour for the meeting of the joint convention of the two houses of the general assembly having arrived, the senate, preceded by the lieutenant governor, appeared within the hall of the house, where seats were provided for them, on the right of the speaker's chair.

Upon the calling of the convention to order, the president, with the consent of the convention, appointed Solon Turman secretary thereof, who was duly sworn in as such by the honorable Samuel Perkins, one of the judges of the supreme court, and entered upon the discharge of his duties

The chairman addressed the convention as follows:

GENTLEMEN: Pursuant to adjournment on Monday, February 2, 1857, we are assembled in joint convention, under a provision of the constitution of the State of Indiana, and you will now proceed to choose a United States senator by a *viva voce* vote, to serve as such until the 4th of March, 1861.

Mr. Walpole nominated Graham N. Fitch.

Those who voted for Graham N. Fitch were—

Messrs. Alexander, Brown, Drew, Fisk, Gooding, Hargrove, Hefner, Hostetter, Johnson, Mansfield, Mathes, Miller, McLary, McLain, Richardson, Rugg, Slater, of Dearborn, Slater, of Johnson, Tarkington, Wallace, Wilson, and Woods, of the senate.

The senator from Laporte, Mr. Weir, voted, blank, 1.

Messrs. Abel, Adams, Allen, Ayres, Bethell, Blake, Bowman, Branson, Brown, Bryan, Carnahan, Clark, Claypool, Conduitt, Crowe, Cullen, Davis, of Sullivan, Denby, Dobbins, Duncan, Early, Edson, Harrison, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Massey, Marvin, Modesitt, Moore, McDannel, McDonald, of Fountain, McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Ricketts, Robbins, Schennerhorn, Sherrod, Shoulders, Slicer, Smith, of Bartholomew, Stillwell, Studabaker, Taggart, Trippet, Wallace, Walpole, Wiley, Williams, of Knox, Williamson, Yater, and Mr. Speaker of the house of representatives.—83.

Messrs. Hayden and Wright voted for George G. Dunn.—2.

Graham N. Fitch having received a majority of all the votes of the members of the general assembly of the State of Indiana, was declared by the president of the convention duly elected United States senator

from the State of Indiana, to serve as such until the 4th day of March, 1861.

The president then announced that the joint convention would now proceed to choose a United States senator by a "viva voce" vote, to serve as such from the 4th of March, 1857, until the 4th of March, 1863.

Senator Slater nominated Hon. Jesse D. Bright.

Those who voted for Jesse D. Bright were—

Messrs. Alexander, Brown, Drew, Fisk, Gooding, Hargrove, Hefren, Hostetter, Johnson, Mansfield, Mathes, Miller, McCleary, McClure, McLane, Richardson, Rugg, Slater, of Dearborn, Slater, of Johnson, Tarkington, Wallace, Wilson, and Woods, of the senate.

And the senator from Laporte, Mr. Weir, was present, and refused to vote for any one.

Messrs. Abel, Adams, Allen, Ayres, Bethell, Blake, Bowman, Branson, Brown, Bryan, Carnahan, Clark, Claypool, Conduitt, Crowe, Cullen, Davis, of Sullivan, Denby, Dobbins, Duncan, Early, Edson, Harrison, Herod, Hoagland, Humphreys, Kerr, Landiss, Lane, Lewis, Massey, Marvin, Modesitt, Moore, McDannel, McDonald, of Fountain, McFarland, McGinnis, McKinney, Neff, Reese, Reyman, Ricketts, Robbins, Schennerhorn, Sherrod, Shoulders, Slicer, Smith, of Bartholomew,, Stillwell, Studabaker, Taggart, Trippet, Wallace, Walpole, Wiley, Williams, of Knox, Williamson, Yater, and Mr. Speaker of the house of representatives.—83.

Messrs. Hayden and Wright voting for Richard W. Thompson.—2.

Jesse D. Bright having received a majority of all the votes of the general assembly of the State of Indiana, was declared by the president of the joint convention duly elected United States senator from the State of Indiana, to serve as such until the 4th day of March, 1863.

The president then adjourned the joint convention to meet in the hall of the house of representatives on Wednesday the 11th instant, at 3 o'clock p. m.

I certify that the foregoing journal of the proceedings of the joint convention is correct.

SOLON TURMAN,
Secretary of Joint Convention.

We declare most positively that it is untrue that the Senate, preceded by the lieutenant governor, appeared in the house, or that there was any command of the constitution requiring an entry of a portion of the senators into the hall of the house for any such purposes as proclaimed by Mr. Hammond at the speaker's stand. We further declare that the entry of said senators, and the action of a portion of the representatives, in the hall of the house, without any resolution of the house or senate fixing a time and place for a joint convention of the two houses, was not only in violation of the rules and proper decorum of the house, but in direct violation of the laws and constitution of the State of Indiana, as well as the Constitution of the United States.

Therefore we, the undersigned, members of the said house, having had no authority to act in the premises, and refusing to be present on

that occasion, hereby protest against any such entry upon the journals of the house, and the doings of the pretended convention, as illegal and void, and ask this, our protest, with our reasons therefor, to be entered upon the journals of the house of representatives.

James D. Conner, of Wabash,	Thomas J. Neal,
Robert Boyd,	Elijah Van Sandt,
M. P. Evans,	H. W. Sherman,
Jno. M. La Rue,	Silas Colgrove,
George C. Merrifield,	Charles M. Stone,
A. McDonald, of Lake,	G. K. Steele,
George Crawford,	J. W. Gordon,
William Grose,	N. H. Ballinger,
J. W. Hutchings,	S. B. Ward,
Smith Vawter,	J. M. Austin,
D. C. Branham,	John Whitcomb,
R. N. Todd,	W. C. Jefferis,
William Hankins,	A. B. Price,
George Moon,	John Davis,
Wm. M. Clapp,	D. Batterton,
T. B. Sloss,	M. C. Smith,
J. P. Williams,	G. D. Wagner,
M. Mercer,	A. H. Conner.

STATE OF INDIANA, }
Marion county. }

Personally came before me, the undersigned, a notary public in and for said county and State aforesaid, David P. Barner, one of the assistant clerks of the house of representatives now in session at Indianapolis, in said State, and made oath that the foregoing is a true copy of a protest of a portion of the members of said house of representatives as presented to said house this day.

D. P. BARNER.

[L. S.] Witness my hand and seal notarial this 13th day of February, 1857.

RICHARD M. HALL,
Notary Public.

G.

Sworn statement of twenty-six of the fifty State senators that they did not participate in the so-called joint convention at which United States senators were claimed to have been elected.

STATE OF INDIANA, }
County of Marion. } ss:

Be it remembered that on this, the 12th day of February, A. D. 1857, personally appeared before me, R. M. Hall, a notary public for the county aforesaid, Daniel R. Bearss, Solomon Blair, John S.

Bobbs, Lewis Burk, G. W. Chapman, Stanley Cooper, David Crane, John R. Cravens, David H. Crouse, Samuel T. Ensey, John T. Freeland, John Green, A. S. Griggs, A. W. Hendry, Daniel Hill, Isaac Kinley, Walter March, C. D. Murray, James F. Parker, Isaac A. Rice, P. S. Sage, John F. Stevens, James F. Suit, John Thompson, John Weston, and John Garyan, who, being duly sworn by me according to law, depose and say: That they are senators, legally entitled to and now holding their seats as such in the senate of the State of Indiana, now in session; that they, twenty-six in number, compose the majority of said Senate; that they were not present at, and did not in any way participate in, the so-called joint convention said to have been held in the hall of the house of representatives of the State of Indiana on the 4th day of February instant, in which so-called joint convention they have been informed that Graham N. Fitch and Jesse D. Bright were, by the presiding officer thereof, declared elected United States senators for the State aforesaid; that, to the best of their knowledge and belief, the senate of the State of Indiana has not at any time during the present session, by resolution or otherwise, given its assent to go into, or in any way participate in, any joint convention for any purpose whatever; and that on the day, and at the very hour, when the so-called joint convention was said to have assembled they, the said senators, twenty-six in number, (except Samuel T. Ensey, who was at home attending upon his sick family,) were in their seats, the senate being in session transacting its regular business.

D. R. Bearss
Solomon Blair
J. S. Bobbs
Lewis Burk
G. W. Chapman
Stanley Cooper
David Crane
John R. Cravens
David H. Crouse
S. Ensey
John T. Freeland
John Green
Algernon S. Griggs

A. W. Hendry
Daniel Hill
Isaac Kinley
Walter March
C. D. Murray
James F. Parker
Isaac A. Rice
P. S. Sage
James F. Suit
John Thompson
John Weston
John Yaryan

Subscribed and sworn to before me, on this, the 12th day of February, A. D. 1857.

In witness whereof I hereunto set my name and affix my notarial [L. s.] seal at the city of Indianapolis.

RICHARD M. HALL,
Notary Public.

STATE OF INDIANA, }
County of Marion, } ss:

Be it remembered that, on the 12th day of February, A. D. 1857, personally appeared before me, R. M. Hall, a notary public for the county aforesaid, Jonathan S. Harvey, principal secretary, and James

N. Tyner, assistant secretary of the senate of the State of Indiana, now in session, who being by me duly sworn according to law, depose and say that the twenty-six persons whose names appear in the foregoing affidavit, to wit: Daniel R. Bearss, Solomon Blair, John S. Bobbs, Lewis Burk, G. W. Chapman, Stanley Cooper, David Crane, John R. Cravens, David H. Crouse, Samuel T. Ensey, John T. Freeland, John Green, A. S. Griggs, A. W. Hendry, Daniel Hill, Isaac Kinley, Walter March, C. D. Murray, James F. Parker, Isaac A. Rice, P. S. Sage, John F. Stevens, James F. Suit, John Thompson, John Weston, and John Yaryan, are all members of the senate of the State of Indiana, now in session, and that they are holding their seats as such.

J. S. HARVEY
JAS. N. TYNER.

Subscribed and sworn to before me, February 12, A. D. 1857.

In witness whereof I hereunto set my hand and affix my notarial [L. s.] seal.



RICHARD M. HALL,
Notary Public.

To the Senate of the United States :

The undersigned, duly elected and qualified members of the general assembly of the State of Indiana, represent to your honorable body that it is important not only to their rights, but to those of the people of the State, that a speedy decision should be made in the case of Graham N. Fitch, who claims to have been elected a member of your body by the legislature of Indiana, on the 4th instant, for the following among other reasons :

1st. As has been shown by the protests, copies of the senate journal, affidavits, &c., which have been forwarded to your honorable body, said Fitch was not elected by the legislature of Indiana, but by a convocation of a portion of the members thereof, not authorized by any law of the State, by resolution adopted by the legislature, by any provision of the constitution of Indiana, or by any provision of the Constitution of the United States.

2d. There is no law in force in Indiana regulating the manner of choosing senators in Congress, except the Constitution of the United States, which, if it were not the supreme law of the land without any legislative enactment on the part of the State, was, by an act of the general assembly of Indiana, approved May 31, 1852, declared to be a law governing this State.—(1 R. S. 1852, 351.)

3d. A decision of your honorable body, sustaining the legality and regularity of Mr. Fitch's pretended election, would destroy the existence of the Senate of Indiana as an independent branch of the legislative department of the State.

4th. The present session of the general assembly will expire, by constitutional limitation, on the 9th of March next; they therefore

pray that you will decide on the pretended claim of Mr. Fitch to hold a seat in your honorable body during your present session, and before the expiration of the present session of the general assembly of Indiana.

INDIANAPOLIS, *February 16, 1857.*

Senators.

D. R. Bearss.
Solomon Blair.
Lewis Burk.
Isaac A. Rice.
Daniel Hill.
David Crane.
A. W. Hendry.
G. W. Chapman.
Isaac Kinley.
John Thompson.
D. H. Crouse.
A. S. Griggs.
M. H. Weir.
P. S. Sage.

J. F. Suit.
S. T. Ensey.
John R. Cravens.
John Yaryan.
Walter March.
John Green.
John T. Freeland.
James F. Parker.
J. F. Stevens.
Stanley Cooper.
C. D. Murry.
J. S. Bobbs.
John Weston.

Representatives.

Wm. Grose.
Charles M. Stone.
Geo. Crawford.
H. W. Sherman.
S. P. Williams.
John Whitcomb.
Geo. C. Merrifield.
John Davis.
G. T. Steele.
Wm. M. Clapp.
Robert Boyd.
Geo. Moon.
A. McDonald, of Lake.
James M. Austin.
Elijah Van Sandt.
T. B. Sloss.
S. B. Ward.
Smith Vawter.

J. W. Hutchings.
Milton Mercer.
Jno. J. Hayden.
Wm. C. Jefferis.
Alex. H. Conner, of Hamilton.
Jno. M. Larue.
William Hankins.
R. N. Todd.
D. C. Branham.
M. P. Evans.
N. C. Smith.
William Hankins.
G. D. Wagner.
J. W. Gordon.
D. Batterton.
Jas. D. Conner, of Wabash.
Silas Colgrove.
Thomas J. Neal.



